



SBGCo Connect March 2024

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Greetings to all our readers!

As March unfolds, it calls for a number of financial year-end obligations under the GST Act. Here's a rundown of these important tasks:

- a. Filing of Letter of Undertaking (LUT) for the upcoming Financial Year: Before March 31st, it's crucial to ensure the submission of your LUT on the common GST portal, ensuring seamless export operations in the next fiscal period.
- b. Opting In or Out of the Composition Scheme: Small taxpayers have an important decision to make - whether to opt for composition scheme for FY 2024-25 or not? In this regard, Form CMP-02 must be filed before the end of March.
- c. Annual Reckoning for Rule 42/43 Reversal: To prevent interest liabilities arising from subsequent determinations of short reversals, it is important that annual working of Rule 42/43 is computed and given effect to in GSTR 3B of March 2024.
- d. Syncing tax liabilities between GSTR-1, GSTR-3B and Books of Accounts: As the curtains close on the fiscal year 2023-24, tax liabilities declared in GSTR-1 should be compared vis-à-vis those paid in GSTR-3B and accounted in Books of accounts and if required, rectification impact may be considered in the upcoming GSTR-1 and GSTR-3B.
- e. Annexure V (opting forward charge) / Annexure VI (revert under RCM) for Goods Transport Agents: For GTAs opting for a change in tax liability mode for the upcoming financial year FY 2024-25, Annexure V (for transitioning to forward charge mechanism - FCM) or Annexure VI (for reverting under Reverse Charge Mechanism - RCM) must be filed before March 31, 2024. However, if the GTA intends to maintain the current tax structure for FY 2024-25 as well, no annexure filing is necessary.

Amidst the upcoming Lok Sabha elections scheduled for April-May 2024, reports suggest that GST council meetings will be postponed until after the election results are declared. Consequently, there will be minimal alterations in the GST law, rules, processes, and procedures during this period.

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 March 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

- **Enhanced E-Invoicing Initiatives and New features now enabled on E-Invoice portal**
 - Pan-based search for E-invoice enablement along GSTIN based search.
 - Publishing list of GSTIN that have filed for E-invoice exemption every month.
 - Enhanced search functionality within advisory, FAQ, manual, and other sections
 - Information and support for the e-invoice QR Code Verifier app
 - Hourly Auto population of e-invoices in GSTR-1 from new IRP
 - E-invoice download for past six months for both buyers and sellers via e-invoice portals

The said advisory from GST Portal can be accessed by clicking on the link [here](#).

II. Press Release by CBIC

- **Caution against fraudsters sending fake and fraudulent Summons**
 - The DGGI wing of the CBIC recently noticed that some individuals were sending fake summons to the taxpayers who may or may not be under investigation by the DGGI.
 - The summons issued have a Document Identification Number (DIN), but these DIN are not issued by the DGGI.
 - Hence, the press release has been issued urging taxpayers to verify the genuineness of any communication (including Summons) from the Department by using the 'VERIFY CBIC-DIN' window on the CBIC's website or the DIN Utility Search on the online portal of Directorate of Data Management (DDM), CBIC.
 - The Press release also advises taxpayers to report suspicious or possibly fake communication letters purporting to communications from the DGGI/ CBIC office for the Department to take necessary action against such activities.

Press Release dated 12.02.2024



B. Recent Decision from the Judiciary:

Category: E-way Bill related

1. Mohammad Shamasher vs. State of West Bengal [2024-TIOL-204-HC-KOL-GST]

Background facts:

Valid E-way bill was generated by the Petitioner for transportation of goods. However, delivery challan was not available with the person in charge of the vehicle when the vehicle was stopped for verification.

Key Issue Raised:

Whether Penalty of 200% of tax is appropriate, in such a case?

Gist of the Decisions:

The Hon'ble HC has held that possession of all document in support of transportation is a fundamental requirement, but there is no intention to evade tax in the case where E-way bill was generated but delivery challan was not produced during verification. The HC further noted that that imposition of penalty at the rate of 200% of the tax payable appears to be highly disproportionate considering there was no intention to evade any tax.

2. Ms. Falguni Steels vs. State of UP [2024-TIOL-283-HC-ALL-GST]

Background facts:

The petitioner is an authorized dealer engaged in supply of Steel. The supplier's invoice contained details of vehicle numbers transporting the goods. On account of some local festival, the movement of goods happened after 2 days from the date of invoice. The movement commenced on the basis of Tax invoice only. E-way bills were not made available at the time of interception, but the same were made available to the officer before issuance of SCN.

Issue Raised:

Whether *mens rea*/ guilty mind can be attributable in such a case for levy of penalty?

Gist of the Decision:

Given the circumstances wherein, tax invoice with vehicle details available, local festival and E-way Bills generated but not available when vehicle was detained, the Hon'ble HC of Allahabad has held that there does not appear to be any intention to evade the tax. There was nothing in the order of the adjudicating authorities that suggested any intention to evade tax on the part of the petitioners. The HC noted that penalties should be proportionate to the gravity of the offense and in this case, the penalties imposed were not proportionate. The HC set aside the order and ordered for refund of the amounts deposited by the petitioner.

3. Akhilesh Traders vs. State Tax of UP [2024-TIOL-331-HC-ALL-GST]

Background facts:

During the course of transportation of goods, the vehicle was intercepted by the proper officer. The movement was being done without invoice and E-way bill. However, subsequent to the interception, these documents were produced by the petitioner.



Key Issue Raised:

Whether levy of penalty is justified in such a case?

Gist of the Decisions:

The Hon'ble HC has held that levy of penalty requires establishment of intention to evade tax. In the event the goods are not accompanied by an invoice or an e-way bill, a presumption may be raised that there is an intention to evade tax.

Production of invoice and e-way bill after interception cannot absolve the petitioner from the liability of penalty as the very purpose of imposing penalty is to act as a deterrent. Hence, the penalties levied on the petitioner was upheld by the HC.

SBGCO comments for 1st, 2nd & 3rd case:

When it comes to E-way Bill provision, it is better to be safe than sorry. The ground level officer would not entertain in case the goods are intercepted without complete set of documents. Getting relief after partial compliance without intention to evade tax also requires intervention of the HC.

All the movement of goods, irrespective of the distance to be travelled should be accompanied by an e-way bill and invoice/ delivery challan, as the case may be. This practice would also help to establish genuineness of the transactions in cases where ITC is questioned on account of default of the opposite party.

Category: Refund and Time-barring

4. Global Health Ltd vs. Commissioner (Appeals) [2024-TIOL-137-HC-MAD-ST]

Background facts:

Refund application for excess payment of cash was filed within 2 years of deposit of such excess amounts. However, the deficiency memo was issued and fresh application after rectifying the defect was filed immediately, but by then, time period of 2 years from the date of excess payment had lapsed.

Key Issue Raised:

Is the Department correct in rejecting the refund application which was filed after receipt of the deficiency memo?

Gist of the Decisions:

The HC has held that the filing date of the initial application shall govern the determination of the time limit for refund application eligibility. Merely because date of filing of refund application subsequent to deficiency memo correcting / clarifying deficiencies falls after the period of 2 years, the refund application won't be considered time-barred in such case.

SBGCO comments:

This is a welcome decision for taxpayer who would lose out on valid refund merely because of some minor discrepancy identified by officer. On the other hand, the taxpayers must also be weary of this fact that filing a refund application very close to expiry of two years would result into additional leverage with the officer to wrongly reject the refund application. Hence, it is always better to be well ahead of the expiry timelines and ensure refund applications are processed without threat of time-barring.



Category: Effective opportunity of Hearing

5. Shakti Steel Trading vs. Assistant Commissioner, TN [2024-TIOL-232-HC-MAD-GST]

Background Facts:

The officer issued a notice via the common portal, which the petitioner, not proficient in technology, failed to acknowledge. Consequently, the officer proceeded to issue an order without receiving any response from the petitioner on the common GST portal.

Issue Raised:

Can a petitioner seek relief of setting aside the order from the HC in such a case?

Gist of the Decision:

The HC observed that there would be some groups, particularly small traders, small service provider and small manufacturers, who may not be ready to receive and respond to notice on the common portal. They may be technologically challenged which may impair them to respond autonomously to emails sent to them.

In the interest of justice, the HC held that it would be a better practice that any one of the other modes of service of notice should be utilized by the Department in case they do not receive any response from the taxpayer. The HC held that there must be some flexibility to ensure that process of adjudication does not become counterproductive. The HC remanded the matter back to the adjudicating authority to pass fresh order on merits after giving fair opportunity.

6. Federal Bank Ltd vs. Assistant Commissioner, Delhi [2024-TIOL-280-HC-DEL-GST]

Background Facts:

Notice was issued on the common portal on December 24, 2023, at 8:39 PM, scheduling a hearing on December 26, 2023, at 11:30 AM. 25th December 2023 was public holiday on account of Christmas. Before the petitioner could consult their HO and prepare for the hearing, Order was issued on 27th December 2023 in a cryptic manner brushing aside the detailed reply filed in October 2023.

Issue Raised:

Can such an Order passed without affording effective Hearing withstand legal scrutiny?

Gist of the Decision:

The HC held that issuance of notice for Personal hearing was issued after business hours and the next day was a gazetted holiday. Hence, adequate opportunity had not been granted to the petitioner to defend the show cause notice by way of a hearing. Hence, such an order is in violation of principles of natural justice and the same was set aside. The HC remitted the case back to the adjudicating authority for *de novo*-adjudication with an instruction that fair opportunity of Personal Hearing should be granted.

SBGCO comments for 5th and 6th case:

Granting an opportunity of Personal Hearing should never be a formality, but should be an effective opportunity wherein the taxpayer is given a fair opportunity to defend and present his case. Any opportunity which merely an opportunity on paper is as good as opportunity not provided. As taxpayers, opportunity of Hearing that must be exercised diligently.



C. Recent Decisions from Advance Authority

1. South India Krishna Oil & Fats Ltd [Order No. AAR No. 12/AP/GST/2023 (Andhra Pradesh) = 2024-VIL-33-AAR]

Background facts:

The Applicant is engaged in manufacturing of edible oils. The Applicant enters into an agreement with its customers for supply of specified quantity of edible oils at specific rate to be delivered within a particular date. When the customer fails to lift the material as agreed, the applicant collects compensation amounts from the customer for breach/ non-performing of the contract. The compensation amounts are calculated based on the difference between the rate agreed with the customer and the market rate on the date of settlement as agreed.

Key Question raised:

Whether the applicants are liable to discharge GST on the compensation amounts from the customer for breach/ non-performing of the contract?

Gist of the Ruling:

The AAR has held that compensation amounts paid by defaulting party to the applicant for tolerating the act of non-performance or breach of contract have to be treated as consideration for tolerating of an act or a situation under an agreement. Hence such an activity constitutes supply of service and the compensation amounts are exigible to GST.

SBGCO comments:

The AAR has tried to reason that merely because any compensation is termed as liquidated damages, it does not mean that the said receipt is not leviable to GST in terms of Circular No. 178/10/2022-GST. It must be seen whether the payments constitute consideration for another independent contract envisaging tolerating an act/ refraining from doing any act or situation/ simply doing an act and if the answer to the above is “yes”, then it will be treated as consideration for a supply.

It is important to understand that for the compensation must be on account of loss suffered and not merely tolerating a breach for the same to outside the purview of GST. In the above case, the AAR has held such compensation is for tolerating the act of non-performance and not towards loss suffered by the Applicant and hence, it is held that such amount is liable to GST.

2. Kannur Internation Airport Ltd [Order No. KER/25/2023 (Kerala) = 2024-VIL-43-AAR]

Background facts:

The applicant has entered into two major contracts with L&T, i.e., one is an EPC contract for constructing runway and another is a BOQ based contract for constructing a Passenger Terminal Building [PTB] in the airport.

Questions raised:

Whether the ITC pertaining to activities that amount to fabrication, completion, fitting out is admissible for claim of credit?



Gist of the Ruling:

The AAR has held that any activity that is integral part of the overall contract for supply of works contract services for construction of immovable property (i.e., runway and passenger terminal building) is not eligible for claim of credit in terms of Section 17(5)(c) and (d) of the CGST Act.

The AAR has held that principal activity is that of construction of runway and passenger terminal building and the contract cannot be artificially vivisected to consider it a contract for supply of various goods / services and pick and chose certain parts as eligible for claim of ITC and some as ineligible.

SBGCO comments:

The AAR has correctly held each activity has to be looked on from the perspective whether such activity is imperative for complete construction of the immovable property. No activity can be looked in isolation because if an activity is integral to completion of the immovable property, then such activity would be considered as a vital part of the immovable property.



D. GST Compliance chart for March 2024

SN	Due Date	Form	Period	Periodicity	Special Remarks
1.	10.03.2024	GSTR - 7	Feb 2024	Monthly	To be filed by those who are required to deduct TDS under GST
2.	10.03.2024	GSTR - 8	Feb 2024	Monthly	To be filed by those who are required to collect TCS under GST
3.	11.03.2024	GSTR - 1	Feb 2024	Monthly	Taxpayers filing GSTR - 1 monthly
4.	13.03.2024	GSTR - 5	Feb 2024	Monthly	To be filed by a non-resident foreign taxpayer registered in GST
5.	13.03.2024	GSTR - 6	Feb 2024	Monthly	To be filed by an ISD
6.	13.03.2024	IFF	Feb 2024	Monthly	To be filed by those under QRMP Scheme (optional)
7.	20.03.2024	GSTR - 3B	Feb 2024	Monthly	To be filed by Taxpayer filing monthly GSTR 3B
8.	20.03.2024	GSTR - 5A	Feb 2024	Monthly	To be filed by non-resident Online Information and Database Access or Retrieval (OIDAR) services provider
9.	25.03.2024	PMT - 06	Feb 2024	Monthly	Challan to be filed for payment by those under QRMP Scheme



Disclaimer

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

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