



# **SBGCo Connect February 2024**

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



Greetings to all our readers!

The interim Budget was presented on 01<sup>st</sup> February 2024 by the Hon'ble Finance Minister of India and Finance Bill, 2024 was placed before the Lok Sabha Assembly. Being the year of Lok Sabha Election, the Finance Bill, 2024 did not propose many changes either to Direct Tax provision or Indirect Tax provisions. However, one key amendment to the GST law was proposed wherein, it is proposed to make Input Service Distributor (ISD) registration mandatory when services for one branch are received by another branch. The GST related changes are covered in this newsletter.

The GSTN portal has now started to accept Letter of Undertaking (LUT) applications required in relation to export of goods and services for FY 2024-25. Hence, wherever required, our readers are advised to file the same before the start of financial year to ensure timely compliance.

The Department has been on a notice issuing spree since the last 3-4 months and the same shall continue till May 2024 on account of time-barring issue for period upto FY 2019-20. It is hereby advised to all our readers to ensure mobile number and email ID are correctly updated for primary Authorised Signatory which are regularly monitored so as to ensure that no department communication is missed to be responded.

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 February 2024](#)

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

Team SBGCo



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

### **I. Union Budget 2024- GST update.**

#### **• Input Service Distributor (ISD)**

- The Finance Bill has proposed to amend the definition of ISD as provided u/s 2(61) of the CGST Act.
- As per the proposed amendment, ISD would mean an office of the supplier of goods or services which receives tax invoices towards receipt of input services including invoices where GST is payable under RCM for and behalf of distinct persons (i.e., other branches having same PAN).
- Previously, RCM related invoices were not a part of ISD mechanism. The proposed amendment now includes such invoices for distribution through ISD mechanism.
- Section 20 which deals with procedure for distribution of credit by an ISD is proposed to be completely substituted by new provisions.
- The proposed section dealing with manner of distribution of credit provides that every office of ISD is required to mandatorily register under GST in terms of Section 24 of the CGST Act. It further provides that the input tax credit on input services received by ISD shall be distributed in the manner as may be prescribed by the rules.

#### **• New Penalty Provision 122A**

- On 5<sup>th</sup> January 2024, Notification No. 04/2024 – Central Tax dated 05.01.2024 was issued wherein special procedures were prescribed for registered person engaged in manufacturing of specific goods (Pan Masala, Gutkha, Tobacco, etc.).
- New Section 122A has been proposed to be introduced under CGST Act wherein additional new penalties have been prescribed for not following the prescribed procedures and maintaining such specific details as sought by the GST law.
- The penalty proposed penalty for every machine not registered under Section 148 including seizure and confiscation if required in specific cases.

➔ *Finance Bill, 2024 as presented in the Parliament on 01.02.2024*

### **SBGCO Comments**

*The biggest change for multi-location organization who had not opted for distribution of common ITC via the ISD route is now proposed by the Finance Bill, 2024 presented in the interim Budget on 01.02.2024. The CGST Act is now proposed to be amended wherein, it shall be mandatory for a multi-location organization to obtain a separate ISD registration for every such office that received input services for or on behalf of distinct person (i.e., other branches having same PAN). Such ISD shall be required to be distribute such ITC (including tax paid under RCM) in a manner to be prescribed by the rules.*

*It must be noted that such an amendment shall be implemented and made applicable only after all the states have also passed similar amendment in their respective state assemblies.*

*However, once the Finance Bill, 2024 is passed without any modification, it would be advisable that multi-location organization initiate the process of obtaining separate ISD registration if required and begin to align their process as required by the law.*



## **II. Notifications issued during this past month**

- **Nature of HSN Classification updated for specific 5% items**
  - HSN entry for Entry for Sr. No 165 and 165A of 5% goods (Schedule I of rate notification) was amended from “2711 12 00, 2711 13 00, 2711 19 00” to “2711 12 00, 2711 13 00, 2711 19 10”
  - ➔ *Notification No. 01/2024 - Central Tax (Rate) dated 03.01.2024*
- **Due date for Form GSTR 3B, Form GSTR 9 and Form GSTR 9C in December 2023 have been extended to 10<sup>th</sup> January 2024 for registered persons whose principal place of business is located in specified flood affected districts of Tamil Nadu**
  - ➔ *Notification No. 01/2024 & 02/2024 - Central Tax dated 05.01.2024*
- **Original notification 30/2023 - CT dated 31.07.2023 which required registered person engaged in manufacturing of specific goods (Pan Masala, Gutkha, Tobacco, etc.) to comply with additional compliances and record keeping is now rescinded & fresh notification with new formats and new forms issued for compliance by such manufacturers of specified goods.**
  - ➔ *Notification No. 03/2024 & 04/2023 - Central Tax dated 05.01.2024*

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

- **GST payment can now be made via Credit/ Debit Cards and UPI.**
  - 10 states are now equipped to receive the GST payment made by Credit/ Debit Cards (Visa, MasterCard, Rupay) and UPI. Other states are still in the process of integration and this facility will soon be made available for all taxpayers across India. The said advisory from GST Portal can be accessed by clicking on the link [here](#).
- **Automated process for suspension & revocation of such suspension of registration if bank account not updated within 30 days of obtaining fresh registration.**
  - The GSTN will soon deploy an automated feature wherein, taxpayers who do not update their bank account details within 30 days of obtaining fresh registration would face consequences whereby the taxpayers GSTIN would be suspended and filing of GSTR 1/IFF would be debarred. The said action would be revoked on compliance by the taxpayers. However, if the non-compliance continues for further 30 days, the GSTIN allotted could also be taken up for cancellation by proper officer.
  - The said advisory from GST Portal can be accessed by clicking on the link [here](#).



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

### **1. Eicher Motors Ltd vs. Superintendent of GST and C Ex. [(2024) 14 Centax 323 (Mad.)]**

#### **Background facts:**

The Petitioner paid cash portion of the tax liability during July 2017 to December 2017 in the electronic Cash Ledger within the timelines prescribed for filing of Form GSTR 3B. However, owing to the issue of reflection of transition credit to electronic credit ledger, the petitioner did not file their GSTR 3B returns. Form GSTR 3B for initial few months was filed only after transition credit was reflected in electronic credit ledger, thereby utilising the said credit and the tax deposited in electronic Cash Ledger each month.

#### **Key Issue Raised:**

The Petitioner has challenged the demand of interest raised by the Department for the period from due date of filing of return of Form GSTR 3B to the actual date of filing of return on the grounds that cash amount payable with each return was duly paid before the due date of filing of return in the electronic cash ledger.

#### **Gist of the Decisions:**

The Hon'ble HC has held that the tax amount has already been credited to the Government before the due date of filing of Form GSTR 3B by deposit in the electronic cash ledger. Hence, it cannot be said that there is a delay in payment of tax to deposit demand interest in such a case. The HC has held that interest would be attracted only in the case where cash payment is made in the electronic cash ledger (vide PMT-06) after the due date of filing of Form GSTR 3B.

#### **SBGCO Comments:**

This is a landmark judgement in the GST regime in regards to computation of interest liability in case of delayed filing of returns. The HC has given due weightage to the act of depositing cash in electronic cash ledger and not to filing of return (after offsetting the liabilities). The HC treats deposit of cash in electronic cash ledger as sufficient compliance of payment to Government to discharge of GST liabilities and filing of returns (by offsetting liabilities is treated as a mere procedural aspect).

This decision would be helpful in all cases whereby cash balance was available in electronic cash ledger and there is a mere delay in filing of Form GSTR 3B/ DRC-03.

### **2. Nexus Motors Pvt Ltd vs. State of Bihar [2024-TIOL-120-HC-PATNA-GST]**

#### **Background facts:**

Adjudication order was passed on 27.04.2023 and the petitioner filed the appeal with appellate authority with a delay of 5 days beyond the condonation power of the appellate authority. The Appellate Authority rejected the appeal on the grounds that it was filed beyond the time limit provided under the law.

#### **Issue Raised:**

In light of Notification No. 53/2023 - CT dated 02.11.2023 which provides for amnesty scheme for filing appeal against order passed on or before 31.03.2023 with a delay beyond the timeline prescribed in the law, can such amnesty scheme be made applicable in this present case where the Order is passed after 31.03.2023?



**Gist of the Decision:**

The Hon'ble HC of Patna has held that there is no rationale for setting the cut-off date of 31.03.2023 for orders against which such amnesty scheme of filing delayed appeal can be availed. Hence, as per the High Court the cut-off date should have been at least three months before date of such notification bringing in the amnesty scheme.

Hence, considering the beneficial interest of the CBIC for announcing such amnesty scheme, HC ordered the Appellate Authority to admit the appeal and pass fresh order on the merits.

**SBGCO Comments:**

This is a welcome judgement wherein, other taxpayers who missed out on filing of appeal in the case of any adjudication demand order passed after 31.03.2023 can still file an appeal with the appellate authority placing reliance on this Patna HC judgement. The Patna HC has indirectly extended the benefit to all cases wherein the order has been passed atleast three months before the date of such amnesty scheme notification.

**3. Ingram Micro India Pvt Ltd vs. State Tax Officer [2024-TIOL-91-HC-MAD-GST]**

**Background facts:**

The petitioner filed company level financial statements at the time of filing of annual returns. While assessing the returns filed by petitioner, the adjudicating officers considered trade payables of the company as a whole, as appearing in Balance Sheet, as trade payable for the state of TN and proceeded to deny the claim of ITC.

**Key Issue Raised:**

Whether such Order, which considered company level data as pertaining to a particular state acceptable under GST?

**Gist of the Decisions:**

The Hon'ble Madras HC has noted that there is no requirement under GST law to submit state level financial statements. The financial statements are drawn on the basis of Companies Act, 2013 for the company as whole. Hence, the officer has not applied his mind while passing the order treating company level trade payable details as details for the state. The HC set aside the order and remanded the same back for fresh adjudication.

**SBGCO comments:**

The Tamil Nadu State officials and CBIC should strictly look into this nuisance wherein, company level details are treated as state level details without any due regards to GST returns filed in other states. Any rational person would not consider details appearing in financial statements as details pertaining to a particular state only. Hence, for other assesses, this case will be useful to ensure that tax officials consider state level data only.

**4. Lansun Logistics vs. Commissioner (Appeals) [2024-TIOL-137-HC-MAD-ST]**

**Background facts:**

Order-in-Order incorrectly mentioned in the preamble that appeal should be filed in three months whereas the actual time limit is only 2 months from date of filing of Order. The actual appeal was filed 21 days after the period of 3 months with condonation application, The



Appeal filed was rejected on the grounds that Commissioner Appeals cannot condone beyond 1 month after the due date of 2 months from receipt of Order.

**Key Issue Raised:**

The Petitioner filed the petition before the HC seeking admission of appeal on the grounds of bonafide belief that time limit was 3 months with additional 1 month being condonable period as per the preamble of the Order.

**Gist of the Decisions:**

The Hon'ble HC of Madras granted relief to the petitioner by permitting the admission of Appeal before the Commissioner Appeals on the grounds that Order in Original inadvertently mentioned incorrect timelines for filing of appeal. The HC directed Commissioner appeals to adjudicate the matter on merits and pass a fresh order in this regard.

**SBGCO comments:**

The Taxpayers may sometimes need to go through extra litigation layers if they are not aware of the correct provisions of the law. It is imperative for any taxpayer to refer notices and orders from their tax consultants, the moment they are received. Deadlines must be adhered to, specially in the GST background so that compliances are duly made and extra layers of litigation need not be faced even on account inadvertent mistakes of the Department.

**5. Primeone Work Force Pvt Ltd vs. Union of India [2024-TIOL-86-HC-ALL-GST]**

**Background Facts:**

Inadvertently, option of personal hearing was marked as "No" on the common GST portal at the time of filing of reply to SCN or got marked as "No" due to some technical glitch/ mistake on the portal. The Department passed adverse Order against the Petitioner without giving opportunity of Hearing.

**Issue Raised:**

Can any adverse order be passed without giving opportunity of hearing as provided under Section 75(4) of the CGST Act?

**Gist of the Decision:**

The HC noted that Section 75(4) of the CGST mandates mandatory hearing to be granted when any adverse order is proposed to be passed against taxpayers. On this ground alone, the HC set aside all the orders passed without granting personal hearing.

**SBGCO comments:**

Taxpayers must be vigilant to ensure that option of personal hearing is not marked as "NO" at the time of filing of reply on the common portal. If the same is marked "NO" either inadvertently or due to technical glitch, then there must be a specific request made in writing to the officer to grant opportunity of personal hearing before adjudication of any issue.



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

### **1. Unique Welding Product Pvt Ltd [Order No. GUJ/GAAR/R/2024/01 (Gujarat) = 2024-VIL-07-AAR]**

#### **Background facts:**

The Applicant has recently installed a roof top solar system with a capacity of 440 KW (AC) on the factory roof for power generation for captive consumption.

#### **Key Question raised:**

Whether the applicants are eligible for ITC on the inputs, input services & capital goods used for erection, commissioning and installation of roof top solar power plant?

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

The AAR held that the applicant is eligible to avail ITC on roof top solar system with installation & commissioning under the GST Law.

#### **SBGCO comments:**

The AAR has correctly interpreted that roof solar plant, affixed on the roof or the building is not embedded to earth is not an immovable property. Further, such roof solar plant would qualify to be plant and machinery and hence, ITC would not be covered under blocked credit as mentioned in 17(5)(d) of the CGST Act.

### **2. Paragon Polymer Products Pvt Ltd [Order No. 27/WBAAR/2023-24 (WB) = 2024-VIL-12-AAR]**

#### **Background facts:**

The applicant intends to manufacture footwear through independent outsource vendors under 'sale and buyback model' wherein raw materials for production will be sold by the applicant to the outsourced vendors and the applicant will buy back the manufactured goods from the said vendors. In this case, the payment to the outsource vendor would be settled through book adjustment at the time of purchase of manufactured product.

#### **Questions raised:**

Whether the ITC is admissible in respect of goods purchased from outsourced vendors, when payment is settled through book adjustment against the debt created on outward supplies to the same vendors?

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

The AAR has analysed the definition of 'consideration' and observes that such definition extends the scope and range for mode of payment. There is no restriction to not pay consideration to vendors via book adjustment. The AAR has held that settlement of mutual debts through book adjustment is a valid mode of payment under the GST Act. Further,

#### **SBGCO comments:**

The AAR has correctly held book-adjustment is a valid mode of settlement and ITC cannot be denied merely because consideration is not paid in cash. The above case is also similar to barter arrangement wherein there is not actual flow of cash but it is a valid mode of supply.





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

<b>SN</b>	<b>Due Date</b>	<b>Form</b>	<b>Period</b>	<b>Periodicity</b>	<b>Special Remarks</b>
1.	10.02.2024	GSTR - 7	Jan 2024	Monthly	To be filed by those who are required to deduct TDS under GST
2.	10.02.2024	GSTR - 8	Jan 2024	Monthly	To be filed by those who are required to collect TCS under GST
3.	11.02.2024	GSTR - 1	Jan 2024	Monthly	Taxpayers filing GSTR - 1 monthly
4.	13.02.2024	GSTR - 5	Jan 2024	Monthly	To be filed by a non-resident foreign taxpayer registered in GST
5.	13.02.2024	GSTR - 6	Jan 2024	Monthly	To be filed by an ISD
6.	13.02.2024	IFF	Jan 2024	Monthly	To be filed by those under QRMP Scheme (optional)
7.	20.02.2024	GSTR - 3B	Jan 2024	Monthly	To be filed by Taxpayer filing monthly GSTR 3B
8.	20.02.2024	GSTR - 5A	Jan 2024	Monthly	To be filed by non-resident Online Information and Database Access or Retrieval (OIDAR) services provider
9.	25.02.2024	PMT - 06	Jan 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:

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)

Want to stay connected, join our Whatsapp group by clicking on the link -  
<https://chat.whatsapp.com/KJRD8SHyjSK5FUkFj8Of4t>