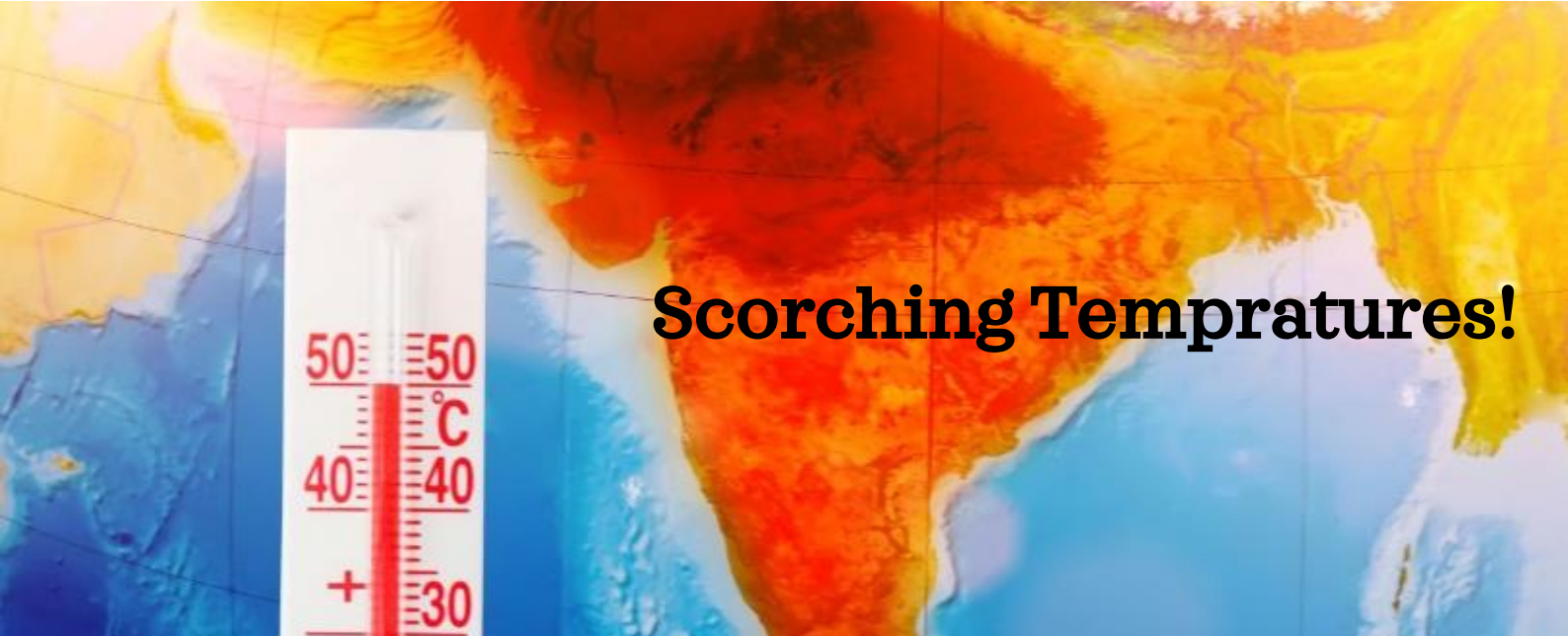


**Highest Scores!**

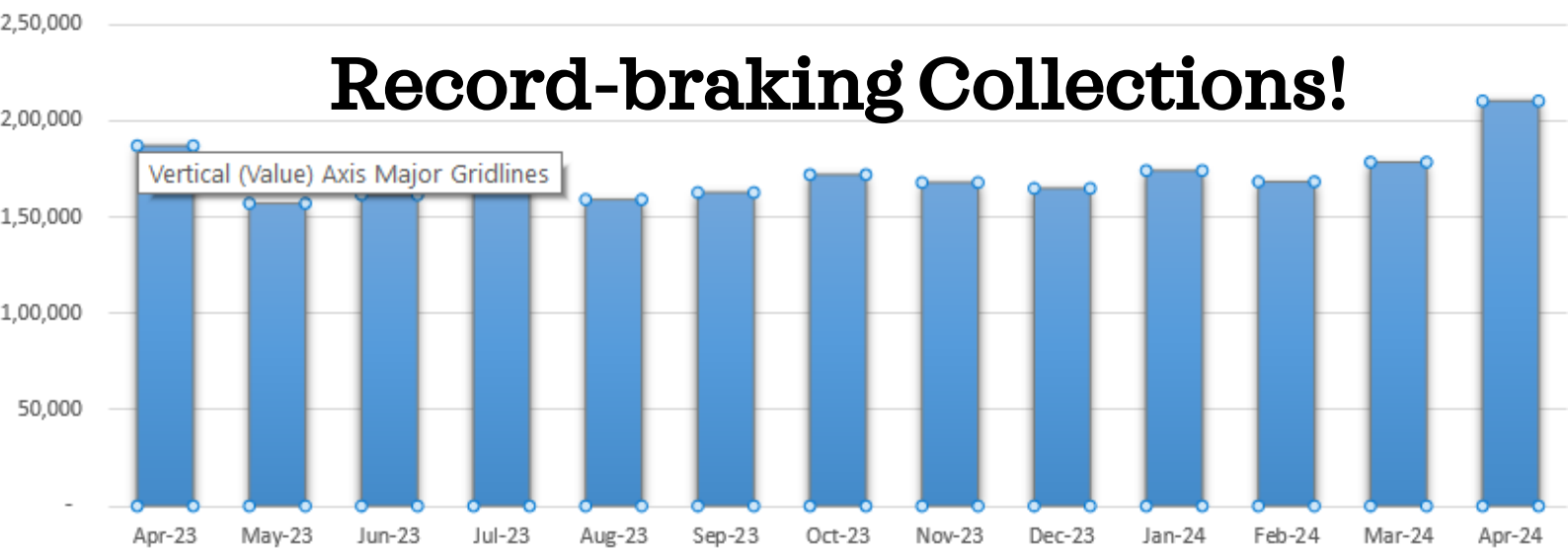


**Scorching Temperatures!**



GST Collections (in lakh crores ₹)

**Record-breaking Collections!**



**SBGCo Connect May 2024**

**S B Gabhawalla & Co**

**Chartered Accountants**



Greetings to all our readers!

April 2024 has been a month for the extremes - Scorching temperatures across India, Highest scores in the IPL, and Record-breaking GST collections of over 2 lakh crores for the first time ever. The PIB of India reported a strong 12.4% year-on-year growth in terms of GST collections for April 2024 with the gross GST collections reaching 2.10 lakh crore. The growth in collection numbers is attributed to rise in domestic transactions and partial increase in imports as well.

In an important development, the Central Government has appointed the Former Hon'ble Chief Justice of the High Court of Jharkhand as the President of the GST Appellate Tribunal w.e.f. 01.05.2024. As per the previous clarifications issued vide Central Goods and Services Tax (Ninth Removal of Difficulties) Order, 2019 dated 03.12.2019, any appeal against the order of the Appellate authority has to be made before the Hon'ble Tribunal within 3 months of the President entering the office. In light of the latest news, it is recommended that readers and taxpayers to initiate the preparation of appeals against any orders issued by the appellate authority. This action is particularly crucial if an appeal is pending due to the absence of the GST appellate tribunal's constitution.

As the fiscal year 2023-24 has concluded, it's crucial to reconcile outward and inward details as per accounts with those furnished in the returns of the previous financial year. Moreover, with the mandatory matching of ITC before claiming it in Form GSTR-3B, taxpayers now have access to unmatched ITC data at the end of each month. It's imperative to review this data promptly and follow up with respective vendors, rather than waiting until October 2024. This proactive approach will facilitate the rectification of any errors that may have occurred during the previous year's return filings, whether at the supplier or recipient end. It will also help prevent unwarranted costs for businesses in the form of lapsed ITC or interest dues.

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 May 2024](#)

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

Team SBGCo



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

### **I. Notifications issued during the month**

- **Implementation date extended for special provision notified for manufacturers of pan-masala, tobacco, gutka, zarda, etc.**
- Vide Notification no. 04/2024 - CT dated 05.01.2024, the Government had notified special compliance provisions for manufacturers of pan-masala, tobacco, gutka, zarda, etc. to be implemented from 01.04.2024.
- The said special provisions of filing of FORM GST SRM-I, FORM GST SRM-II, and FORM GST SRM-III for such taxpayers shall now be implemented w.e.f. 15.05.2024.

*Notification no. 08/2024 - Central Tax dated 10.04.2024*

- **Due date for GSTR 1 extended for March 2024**

- On account of persistent glitches on the GST portal, the due date for filing of Form GSTR 1 for March 2024 was extended by one day, i.e., upto 12<sup>th</sup> April 2024.

*Notification no. 09/2024 - Central Tax dated 12.04.2024*

### **II. GSTN portal updates**

- **Auto-population of HSN summary based on E-invoices**

- GST portal has introduced a new feature whereby HSN-wise summary from E-invoices shall be auto-populated in Table 12 of Form GSTR 1.
- The above feature shall be very useful for those taxpayers who only have B2B taxable supplies.
- Taxpayers who provide exempt supplies and B2C supplies are advised to not use this facility but to upload a fresh HSN summary after reconciling their data.

*The said GSTN advisory can be accessed by clicking on the link [here](#).*



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

**Category: Taxability of transfer of development rights**

**1. Prahitha Construction Pvt Ltd vs. Union of India [2024-TIOL-623-HC-TELANGANA-GST]**

**Background facts:**

The petitioner is a company engaged in the business of construction activities. The petitioner has filed the present writ petitioner before the Hon'ble to issue a specific direction that the transfer of development rights of land by the land owners to the petitioner by way of a Joint Development Agreement ('JDA') should be treated as a sale of land and thus, should not be subjected to GST considering Schedule III of the CGST Act.

**Key Issue Raised:**

Whether transfer of development rights of land is same as sale of land?

**Gist of the Decisions:**

The Hon'ble HC scrutinized the JDA in depth and observed the following key aspects as under:

- a. The ownership, title, and possession of the subject property vests with the landowners.
- b. The petitioner would have the license to enter the subject property of the landowners for execution of the development activities on the said property.
- c. After developing the entire property, the landowners would grant a share in the land proportionate to the built-up area to the petitioner for which the petitioner is entitled to collect the consideration.
- d. The entire rights of the said property would continue to remain with the landowners even in the case of cancellation of the contract.
- e. After the completion of the development activity, a separate conveyance deed would be entered between landowners and the petitioner to transfer the undivided share of land which would fall to the share of the petitioner towards the investment, efforts, cost of construction, and expenses incurred by the petitioner.

The Hon'ble HC held that it cannot be said that JDA always results into sale of land. The execution of JDA between the two parties by itself would not amount to transfer of ownership. The services rendered by the petitioner in the execution of JDA are supplied before the completion of the project (i.e., before receiving the completion certificate). Hence, the transfer of development rights is a service that the landowner is offering to the petitioner for consideration. Transfer of development rights is not an outright sale of immovable property.

**SBGCO comments:**

Since the inception of GST, Schedule III specifically excluded only the sale of land from its purview, deliberately differing from the exclusions under the previous service tax regime. The Government's intent regarding the taxability of development rights under GST has always been clear. The recent High Court judgment reaffirms this stance. Importantly, in the present case, the Court conducted an independent analysis of the taxability of development rights transfers, not relying on past indirect tax precedents. However, there might be some light at the end of the tunnel if the such taxpayers decide to knock the doors of the Supreme Court at a subsequent stage.



**Category: Adjudication and Summons**

**2. M/s. Kota Metals vs. Addl. Commissioner [2024-TIOL-561-HC-RAJ-GST]**

**Background facts:**

The State authorities had initiated proceedings against the petitioner in respect of a particular issue. Subsequently, the Directorate General of GST Intelligence (DGGI) also issued a summons to the petitioner concerning the same subject matter. The Petitioner has approached the HC to squash the summons issued by the DGGI on the grounds that Section 6(2)(b) bars proceedings by another authority on the same subject matter.

**Key Issue Raised:**

Is the issuance of summons by the DGGI u/s 70 of the CGST Act valid when proceedings are already initiated by the State authorities?

**Gist of the Decisions:**

The HC held that the scope of 'proceedings' initiated by the State authorities cannot be mixed with 'inquiry' initiated by way of issuance of a summons by the DGGI. The HC also held that issuance of a summons for conducting an inquiry and to obtain a statement from the petitioner cannot be construed to be a bar under Section 6(2)(b) of the CGST Act.

**SBGCO comments:**

It is now upheld that DGGI can issue summons to conduct inquiry for any subject matter, even if the said matter is already being dealt with, by other tax authorities. Receiving a summons from any authority demands immediate attention and careful consideration from taxpayers. It's crucial to seek legal counsel promptly upon receiving such a notice, before engaging with the officer or providing any written statement. Summons are typically issued by tax officers when there's a significant matter to address, emphasizing the importance of approaching the situation with diligence and professional guidance.

**Category: Exemption - residential dwelling**

**3. Thai Mookambikaa Ladies Hostel vs. Union of India [2024-TIOL-588-HC-MAD-GST]**

**Background facts:**

The petitioner has applied for an advance ruling regarding the taxability of hostel accommodation provided to female students and working women on a monthly basis with reasonable tariffs. The authority for advance ruling held that hostel accommodation is akin to hotel accommodation and therefore, such services would be treated as taxable under GST.

**Key Issue Raised:**

Whether hostel accommodation be eligible for exemption under GST for the use of such place as a residence by these female students and working women?

**Gist of the Decisions:**

The Hon'ble HC held that the purpose and the object of the legislation in issuing the present Notification should be of paramount importance. The HC gave a wonderful example to counter the ruling of the advance authority wherein, it stated that if the interpretation of the advance ruling authority is considered then a working woman, who is drawing a salary of around Rs.15,000/- to Rs.20,000/- and paying hostel rent of Rs.6,000/- will not be exempted from GST, whereas a Manager, who is working in a same office and can afford to pay rent of



Rs.30,000/- to Rs.50,000/- will be exempted from GST. The HC held that the purpose of the exemption given in the Notification is only to lessen the burden of tax on the dwellers, who are the tenants of the residential premises taken on rent.

The Hon'ble HC further held that the exemption regarding the use of residential dwelling as a residence should be seen from the perspective of the service recipient and not the service provider. It would then be clear that the women opting for hostel accommodation treat such a place as their residential dwelling and use the same as their residence only. Hence, the exemption provided by Entry No.12 of Notification No.12/ 2017 - CT (R) dated 28.06.2017 would squarely cover hostel accommodation.

**SBGCO comments:**

The above decision further re-affirms the position taken by Karnataka HC in the case of Taghar Vasudeva Ambrish vs AAAR, Karnataka [2022-TIOL-242-HC-KAR-GST]. This judgement emphasizes on the importance of considering the intention of the lawmakers and also to view the GST law from the perspective of a service receiver as well, because he is the ultimate bearer of the tax paid to the Government.

**Category: Interpretation issue and levy of penalty**

**4. Mitra S K Pvt Ltd vs. Commissioner of ST [2024-TIOL-405-CESTAT-KOL]**

**Background facts:**

The appellant is providing the service of Testing, Inspection, and Certification Services. During the period Oct 2005 to Sept 2010, they have been providing the service for the goods which were to be exported from India to other foreign buyers. The appellant believes that the services provided by them amounted to export of services but the Department is of the view that the services provided by them are liable to service tax. Hence, the Department issued a SCN and after due process, the demands were confirmed. Being aggrieved, the Appellant is before the Tribunal.

**Issue Raised:**

Due to interpretation challenges and existing litigation on the same issue before various Courts, can the liability be fastened on the appellant?

**Gist of the Decision:**

The Hon'ble Tribunal agreed with the contention of the appellants for the period upto March 2008. However, due to subsequent amendments made to Export of Service Rules 2005 after March 2008, the Hon'ble Tribunal agreed with the contentions of the Department.

However, the Tribunal made the following observations:

- a. Similar matters were placed before other Courts as well
- b. There was a genuine belief that tax was not payable
- c. There were interpretation challenges on the said subject matter.

Hence, the extended period of limitation cannot be raised in such a case. Additionally, levy of penalty was also set aside by the Hon'ble Tribunal owing to the factual details and the interpretational difficulties.



**SBGCO comments:**

A genuine commitment to tax compliance, especially in the face of complex interpretation issues, generally does not lead to the imposition of penalties. The presence of 'intention' is a crucial factor in determining whether penalties are warranted or not. Courts typically require evidence of deliberate wrongdoing to justify penalties. Even if a tax demand is upheld, courts often show leniency in cases where there is clear evidence of sincere compliance efforts and no malicious intent.

**Category: Procedural compliance and clarificatory amendments to Rule**

**5. Otsuka Pharmaceuticals India Pvt Ltd vs. Union of India [2024-TIOL-579-HC-AHM-GST]**

**Background facts:**

After filing of appeal before the appellate authority, the petitioner submitted certified copies of the order after 71 to 106 days of due date of filing of appeal. The appellate authority rejected the appeals and declined to entertain them on the grounds of inordinate delay. The petitioner filed the present writ petition before the HC challenging the rejection of the appellate authority.

**Key Issue Raised:**

Whether delay in submitting certified copies be considered a delay in filing of appeal, specifically in light of the recent amendment in December 2022 to the appeal filing procedures?

**Gist of the Decisions:**

The Hon'ble HC held that on a literal reading of the rules, the appellate authority was correct in rejecting the appeals filed by the petitioner. However, a clarificatory proviso was inserted in Rule 108 which came into effect w.e.f. 26.12.2022. According to the proviso, when an order which is appealed against is issued or uploaded on the common portal and the same can be viewed by the appellate authority, the requirement of submission of a certified copy of such an uploaded order to vouch for its authenticity would be insignificant given the availability of the order online.

The HC also held such insertion of proviso would be considered to have a retrospective effect because it is clarificatory in nature. Hence, the HC ordered the appellate authority to consider the appeals of the petitioner on merits after giving a fresh round of personal hearings.

**SBGCO comments:**

It's paramount for all taxpayers to strictly follow the procedural requirements outlined by the law to avoid any risk of having their intended benefits denied on technical grounds. Additionally, the recent High Court decision ensures that appeals won't be dismissed solely due to delays in submitting certified copies of the Order, as long as the Order appealed against was uploaded on the common GST portal. The High Court's affirmation of the retrospective applicability of clarificatory amendments underlines the procedural nature of these changes.



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

### **1. Waaree Energies Limited [Order No. GUJ/GAAR/R/2024/09 (Gujarat) = 2024-VIL-62-AAR]**

#### **Background facts:**

The applicant is registered as an “SEZ Unit” located in Surat, Gujarat. The applicant is engaged in the manufacture of solar modules. For providing the said supplies, they have availed services such as goods transport agency (GTA), Legal services from advocate, security services, bus hiring for employees from Domestic Tariff Area (DTA) service providers.

#### **Questions raised:**

Whether an SEZ unit is required to pay tax under RCM on specified services in accordance with notification No. 10/2017-IT(Rate) dated 28.6.2017, as amended?

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

The AAR has held that service provider from DTA can procure Letter of Undertaking and provide services to an SEZ unit without payment of IGST for authorized operations. Hence, such supplies shall reported as zero-rate supplies in the returns furnished by such service provider. Thus, the said SEZ unit need not discharge tax under RCM for such zero-rated supplies.

The AAR has relied on Notification No. 37/2017 -Central Tax dated 4.10.2017, clarification issued by Tax Research Unit, CBIC, New Delhi and decision of Maharashtra Appellate Authority for Advance Ruling in the case of M/s. Portescap India P Ltd [2023-VIL-09-AAAR] to arrive at the above conclusion.

#### **SBGCO comments:**

The said issue, as to whether SEZ units are required to pay tax under RCM, is more or less now settled whereby the Department has also acknowledged the intention of the legislature (GST law and the SEZ Act) and do not require the SEZ units to pay tax under RCM.

The SEZ units are anyways involved in export services and claim refund of input tax credits. Thus, requiring them to pay tax first only to claim refund always seemed like an extra burden on the financial resources of the SEZ units. Hence, the said AAR is a welcome decision in this regard,





## **2. DRS Dilip Roadlines Limited [Order No. 07/2024 (Telangana) = 2024-VIL-64-AAR]**

### **Background facts:**

The applicant is a registered Goods Transport Agent (GTA) providing service of transportation of goods. The applicant also undertakes the following activities along with transportation services viz., packing, loading, unloading, and unpacking.

### **Key Question raised:**

Whether the applicant's activity falls under Goods Transport Agency along with the ancillary activities?

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

The AAR has analysed the concept of composite supply provided under the GST law and Entry 9(iii) of the Notification 11/2017 - CT (R) dated 28.06.2017. The AAR has concluded that the ancillary activities of packing, loading, unloading, and unpacking are "in relation to" transportation services when they are provided together for the same goods. Hence, the entire activity shall be treated as transportation of goods when provided for the same goods and considering the provisions of composite supply, the taxability of the supply shall be as applicable to the principal supply of transportation.

### **SBGCO comments:**

The said ruling is a welcome decision specifically for the GTAs who provide the ancillary services of packing, unpacking, loading and unloading. If any or all of these activities are provided for the same goods along with transportation service, then the entire activity would be treated on par with transportation of goods services.



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

<b>S N</b>	<b>Due Date</b>	<b>Form</b>	<b>Period</b>	<b>Periodicity</b>	<b>Special Remarks</b>
1.	10.05.2023	GSTR - 7	April 2023	Monthly	To be filed by those who are required to deduct TDS under GST
2.	10.05.2023	GSTR - 8	April 2023	Monthly	To be filed by those who are required to collect TCS under GST
3.	11.05.2023	GSTR - 1	April 2023	Monthly	Taxpayers filing GSTR - 1 monthly
4.	13.05.2023	GSTR - 6	April 2023	Monthly	To be filed by an ISD
5.	13.05.2023	IFF	April 2023	Monthly	To be filed by those under QRMP Scheme (Optional)
6.	13.05.2023	GSTR - 5	April 2023	Monthly	To be filed by a non-resident foreign taxpayer registered in GST
7.	20.05.2023	GSTR - 3B	April 2023	Monthly	To be filed by Taxpayer filing monthly GSTR 3B
8.	20.05.2023	GSTR - 5A	April 2023	Monthly	To be filed by non-resident Online Information and Database Access or Retrieval (OIDAR) services provider
9.	25.05.2023	PMT - 06	April 2023	Monthly	Challan to be filed for payment by those under QRMP Scheme



## **Disclaimer**

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