

# **GST - Annual Return Filing Season is here!**



**SBGCo Connect December 2023**

**S B Gabhawalla & Co  
Chartered Accountants**



Greetings to all our readers!

December month is here and it is probably one of the most crucial months in regards to taxpayers who are required to comply with the requirements of Annual Return in Form GSTR 9 and Self-certified Reconciliation Statement in Form GSTR-9C. The process of accounting and filing of returns may have streamlined a bit in the past year or so, but changes to return filing process in-between FY 2022-23 needs to be kept in mind by taxpayers as it could impact the time required for compiling and processing details required for the Annual compliances. Hence, with one eye towards monthly compliances and filing of replies to notices in a timely manner, the taxpayers should ensure that their annual compliances are completed well in advance and not wait for the last week or so.

31<sup>st</sup> December 2023 also marks last date to update/ amend the values of the opening unclaimed ITC balance reported on the portal on or before 30<sup>th</sup> November 2023 for the tax period up to July 2023. The values reported in the said ledger, maintained by the GST portal itself, would then be used for issuance of system generated notice in Form GST DRC-01C, if required regarding excess claim of ITC, if any.

The GSTN portal is planning to introduce two-factor authentication (2FA) for taxpayers to strengthen the login process on the GST portal i.e., for every login attempt, the taxpayer would be required to enter an OTP which would be sent to the mobile number and email ID of the primary authorized signatory. Currently, the feature of 2FA is enabled for state of Haryana only and w.e.f. 01<sup>st</sup> December 2023, few other states viz., Punjab, Chandigarh, Uttarakhand, Rajasthan and Delhi, are being included for this pilot phase portal update. The GSTN portal has advised the taxpayers to ensure mobile numbers and email IDs are correctly updated to ensure seamless receipt of OTPs for 2FA process. The above GSTN advisory can be accessed by clicking [here](#).

The Amnesty Scheme for taxpayers who has missed to file Appeals or filed delayed Appeal against tax demand order is now active on the GST portal and the last window to exercise the benefit of such amnesty scheme is now enabled up to 31<sup>st</sup> January 2024 by the GSTN portal.

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 December 2023](#)

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

Team SBGCo



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

### **I. Instruction to Department Officers regarding serving of the summary of notice in FORM GST DRC-01 and uploading of summary of order in FORM GST DRC-07 electronically on the portal.**

- The instruction specifically states that non-issuance of the summary of notices/ orders electronically on the portal is a clear violation of the explicit provisions of CGST Rules.
- Hence, all proper officers are DIRECTED to serve the summary of notice in FORM GST DRC-01 and summary of order in FORM GST DRC-07, electronically on the common GST Portal.

*Instruction No. 04/2023-GST dated 23.11.2023*

#### ***SBGCo Comments***

The High Courts have been very vocal about this issue and in many cases, set aside orders which have not followed the mandatory provisions of the law in relation to service of notices and orders. The new set of instruction categorically states that non-service of notice and order electronically on the GST common portal is contrary to the provisions of the Law and hence, the officers are directed to ensure that notices and orders are all uploaded on the common GST portal in order to be compliant with the provisions of the GST law.

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

### **• Amnesty scheme for filing of GST Appeal**

- *Who are Eligible taxpayers for this amnesty?*
  - ➔ Those who could not file appeal on or before 31<sup>st</sup> March 2023 against order issued u/s 73 or 74 within the prescribed timelines
  - ➔ Those who filed the appeal but the same was rejected on the grounds that the said appeal was not filed within the prescribed timeline
- *Last day to file appeal under this scheme?*
  - ➔ 31<sup>st</sup> January 2024
- *Conditions to be fulfilled before filing appeal under Amnesty Scheme?*
  - ➔ Pay full tax, interest, fine, fee and penalty which is admitted by taxpayer
  - ➔ Pay 12.5% of amount of tax in dispute as pre-deposit (subject to upper limit of Rs. 25 crores) out of which atleast 20% of the pre-deposit should be paid by debiting electronic cash ledger
- *Exclusions from Amnesty Scheme?*
  - ➔ Orders not related to demand of tax (Eg. Cancellation of GST registration, etc.)
- *Refund clarification:*
  - ➔ No refund shall be granted on account this notification if higher amounts have already been paid/ deposited than the amount prescribed in the conditions

*Notification No. 53/2023 – Central Tax dated 02.11.2023*



***SBGCo Comments***

The CBIC has introduced this amnesty scheme for the benefit of those taxpayers who could not file their appeals on time for whatsoever reasons.

Some minor issues still persist in the scheme, for example, what if the taxpayer has paid entire tax under dispute via ITC because in such cases, if the taxpayer is still required to pay 20% of pre-deposit in cash, then it would result in payment of 102.5% of the demand liability. Hoping the CBIC comes up with detailed clarifications for such queries in relation to the amnesty scheme.

• **Fresh GST Registration process modified for Andhra Pradesh**

- Based on data analysis and risk parameters, Rule 8(4A) requires certain applicants of fresh GST Registration to undergo biometric-based Aadhaar authentication, clicking of photographs (of applicant or specified persons listed in case where the applicant is not an individual) and verification of documents uploaded in registration form along with Original Copy at notified facilitation centres.
- Such rule was currently applicable to Gujarat and Puducherry only. W.e.f. 17<sup>th</sup> November 2023, such rule is now made applicable to Andhra Pradesh also.

*Notification No. 54/2023 - Central Tax dated 17.11.2023*

***SBGCo Comments***

This rule was introduced in December 2022 and Gujarat was the first state of implement this. Within a year, the said provisions have been made effective in 3 states and UTs. Considering the enormous amount of data collected from analysed by the Dept, such provisions will soon be implemented across the country.



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

**1. Lenovo India Pvt Ltd vs. Joint Commissioner of GST (Appeals-1), Chennai [2023-TIOL-1593-HC-MAD-GST]**

**Background facts:**

The Petitioner filed refund applications for refund of IGST paid on supply of goods to SEZ units/ developers. The reasons assigned for substantial refund rejections by Appellate Authority were:

- i) Inordinate delay in obtaining the endorsements/ Inappropriate Endorsement/ Endorsement seal is incomplete/ Endorsement does not state that goods are used for 'authorized operations'
- ii) Proof of delivery (POD) submitted after Personal hearing is beyond period of 2 years and hence time barred
- iii) Mismatch in Statement-4 (details of supplies made to SEZ unit/ developer)

**Key Issue Raised:**

The Petitioner has challenged the Order of the Appellate Authority and seeks HC's direction to the adjudicating officer to grant refund since the above grounds for rejection are invalid.

**Gist of the Decisions:**

- i) The time limit prescribed in Rule 30 of the SEZ Rules for obtaining endorsement does not limit the right of the petitioner to claim refund of tax paid for zero-rated supply. The inordinate delay, if any would impact the petitioner only and not the Department in any manner. The purpose of endorsement is only to ensure that goods have entered SEZ and nothing more. Even if there is a delay in endorsement, the right of the petitioner to claim refund is not infringed.  
If there is no doubt regarding the signature of the AO officer, all other issues such as irregular endorsement, etc are all technical irregularities that will not defeat the substantial right of the Petitioner.
- ii) The Hon'ble HC has held that the time-limit of 2 years prescribed by Section 54 of the CGST Act is directory in nature and even if the application of refund is filed after the period of limitation, the officer can permit the claim of refund. Hence, submission of any supporting documents (such as obtaining POD) even after period of 2 years, cannot be held good since the above time-limit is directory in nature and not mandatory.  
Further, the HC noted that the deficiency, if any, in relation to documentation, should be raised before acknowledging the refund application by issuing deficiency memo and not after accepting refund application by way of SCN in Form GST RFD-08.
- iii) Mismatch in Statement 4 was duly rectified by Petitioner and hence, there was no valid reason to reject refund on such grounds.

The Hon'ble HC set aside the Order of the Appellate Authority and directed to the adjudicating officer to grant refund along with appropriate interest in line with the above decision.

**SBGCO Comments:**

The Key take-away from the above decision is that deficiency in documentation should be raised by Department before issuance of acknowledgement of acceptance of refund application in Form GST RFD-02 and refund application can be filed by petitioner even after



two years since the time limit is prescribed in the GST law is directory and the officers can still process the claim of refund if the application of claim of refund is filed after period of two years.

The above judgement also re-iterates the significance of substantial right of taxpayer against minor procedural irregularities and that such irregularities would not defeat the overall benefit available to the taxpayer under the law.

## 2. **New Morning Star Travels vs. Deputy Commissioner (ST) [(2023) 12 Centax 198 (A.P.)]**

### **Background facts:**

Show cause notice was issued to the Petitioner under Section 74(1) of the CGST Act by the proper officer for the assessment period from 01.07.2017 to 31.03.2021. However, the said SCN was not preceded by an intimation of liability in Part of Form GST DRC-01A in terms of the provisions of Rule 142(1A) of the CGST Rules.

<b>Relevant provision of Rule 142(1A) before 15.10.2020</b>	<b>Relevant provision of Rule 142(1A) after 15.10.2020</b>
<i>The <u>proper officer shall</u>, before service of notice to the person chargeable with tax, interest and penalty, under sub-section (1) of Section 73 or sub-section (1) of Section 74, as the case may be, <u>shall communicate</u> the details of any tax, interest and penalty as ascertained by the said officer, in Part A of FORM GST DRC-01A</i>	<i>The <u>proper officer may</u>, before service of notice to the person chargeable with tax, interest and penalty, under sub-section (1) of Section 73 or sub-section (1) of Section 74, as the case may be, <u>communicate the details of</u> any tax, interest and penalty as ascertained by the said officer, in Part A of FORM GST DRC-01A</i>

### **Issue Raised:**

Even though some portion of assessment period relates to after 15.10.2020 (i.e., after the amendment), is issuance of intimation of liability in Part of Form GST DRC-01A mandatory for the current case?

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

The Hon'ble HC of Andhra Pradesh held that even though the tax period relates to 01.07.2017 to 31.03.2021 which covers the pre and post amendment of Rule 142(1A) of the CGST Rules, the proper officer ought to have issued an intimation of liability in Part of Form GST DRC-01A as major portion of the tax period is prior to the amendment.

The HC has specifically held that employment of the word 'shall' in Rule 142(1A) upto 15.10.2020 (i.e., prior to amendment) indicates that the officer has to necessarily follow the procedure prescribed under Rule 142(1A) of the CGST Rules. Any order which is passed by not following the mandatory procedures of the law is liable to be set aside.

## 3. **Sundar Prabu Deva vs. State Tax Officer [2023-TIOL-1633-HC-MAD-GST]**

### **Background facts:**

The Respondents issued a show cause notice to the Petitioner on 04.03.2023 by uploading the same on the common online GST portal. The time limit granted to submit the reply was 30 days but the personal hearing was scheduled on 17.03.2023 (i.e., prior to expiry of time limit to submit the reply). The Order was issued on 01.06.2023.



**Key Issue Raised:**

In the instant case, can such an order be considered to be proper and legal order?

**Gist of the Decisions:**

The Hon'ble Madras HC held that calling the petitioner for a personal hearing much prior to the final date fixed for submission of reply indicates that the real intention of the Department is not to provide fair opportunity to the petitioner to defend their case. Such opportunity appears to be nominal and not a real and effective opportunity. Such actions by the Department officers put the petitioner in peril and hence, are liable to be set aside.

The HC set aside the order and remanded the matter back to the adjudicating officer for re-consideration by giving real and fair opportunity for the petitioner to represent their case.

**4. M/s. Chitra Automobile vs. State of Jharkhand [2023-TIOL-1614-HC-JHARKHAND-GST]**

**Background facts:**

A Show Cause Notice under Section 73 of the JGST Act, 2017 was issued on the common GST portal on 12.02.2022 along with Form GST DRC-01 related to the Tax Period, "March 2019", requiring the petitioner to submit a reply against the same. The said notice was issued in a format without striking out irrelevant particulars. Furthermore, the Department proceeded to issue a summary of the Order in Form GST DRC-07 on 17.02.2022 (within 5 days of the SCN) on the common GST portal on the grounds that no reply was submitted by the petitioner.

**Key Issue Raised:**

The legal validity of the said notice and the order was challenged before the Hon'ble HC.

**Gist of the Decisions:**

The Hon'ble HC of Jharkhand held that issuance of Order in Form GST DRC-07 within 5 days of issuance of summary notice in Form GST DRC-01 is a clear picture of violation of principles of natural justice. Additionally, the SCN is considered vague as it does not spell out the contraventions for which the petitioner is charged.

For the above reasons, the HC set aside the Order passed in such hurry in violation of the procedures laid down by the law since the foundation of the present proceedings suffers from material irregularity.

**5. AB Enterprises vs. Commissioner of Delhi, GST [2023-TIOL-1598-HC-DEL-GST]**

**Background Facts:**

The petitioner had filed an application in Form GST RFD-01 on 24.03.2022 for refund of the unutilized ITC in respect of zero-rated supplies made in the month of December, 2021 along with relevant documents. The said application was not processed and deficiency memo was issued with following remarks: 'Relevant supporting documents not attached' & 'Supporting documents attached are incomplete'

**Issue Raised:**

The petitioner challenged the impugned communication issued by way of deficiency memo.



**Gist of the Decision:**

The Hon'ble HC of Delhi held that the deficiency memo issued by the Department is bereft on any specific details as the same neither sets out the relevant documents which are not provided nor indicates incomplete documents. Hence, the HC set aside the impugned deficiency memo and directed the proper officer to issue acknowledgement in terms of the provisions of the law and accept the said refund application.

**SBGCO comments for 2<sup>nd</sup>, 3<sup>rd</sup>, 4<sup>th</sup> & 5<sup>th</sup> decisions summarized above:**

The above 4 decisions from 4 different High Courts for 4 different types of procedural lapse by the Department highlights the importance of the following the due legal process laid down by the Law. Additionally, as a taxpayer is equally important to know about your rights (i.e., department's duties) so that such rights are not exploited by Department in the garb of legal proceedings. The above cases summarize the legal process required to be followed by the Department as under:

- If scrutiny proceedings are initiated for any period prior to 15.10.2020, it is mandatory to issue intimation of liability in Part A of Form GST DRC-01A. (not in case of Department Audit/ investigation, etc.) before issuing a SCN
- The communications/ notices must be issued on the common online portal and every such communication/notice (be it deficiency memo or SCN), it must be clear, precise and contain relevant details for taxpayer to reply with a plausible reply/ defence.
- The time limits set out in the law must be strictly followed without trampling any rights of the taxpayers.
- The opportunity of putting up a defence should be real and fair, be it in terms of reply to SCN or timelines to appear for a personal hearing.
- The summary of all Orders should also be uploaded on the common GST portal (Instruction No. 04/2023)





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

### **1. Dedicated Freight Corridor Corporation of India Ltd [Order No. GUJ/GAAR/R/2023/31 (Gujarat) = 2023-VIL-200-AAR]**

#### **Background facts:**

The Applicant is a PSU under the ownership and control of Ministry of Railways. When entering into third party contracts there is a dispute resolution clause. Inter alia, such clause read with NITI Aayog order requires depositing of 75% of the disputed amount into an escrow account of which the banker shall be the trustee, when an adverse order is passed by Dispute Adjudication Board (DAB)/ Arbitration Board.

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

- Whether the amount deposited by the applicant (75%) in escrow account against bank guarantee pending outcome of the further challenge against Arbitral Award or dissatisfaction against DAB decision, is liable to GST under the provisions of CGST Act, 2017?

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

The AAR held that this payment of 75% into an escrow account would not fall within the ambit of supply or consideration to be leviable to GST.

#### **SBGCO comments:**

The question here was not whether consequent to the DAB/arbitral award, the change, if any, in the value pertaining to the supply, rate of supply etc., would be leviable to GST or not. It was directed only towards the amounts of deposited in escrow account. The amount deposited in escrow accounts is for mere assurance of the party in whose favour the order has been passed. This is neither a consideration nor a supply when the same is deposited into the escrow account and therefore the AAR has rightly treated such amount is not liable to GST.



## **2. M/s. 2Win Residency Ladies Hostel [Order No. 32/AAR/2023 (TN) = 2023-VIL-204-AAR]**

### **Background facts:**

The Applicant is running a ladies residential hostel for college students and working people. The monthly tariff per student or per person ranges between Rs. 2,000/- to Rs. 3,000/ per month. The Applicant have obtained license under 'Tamil Nadu Hostels and Home for women and children (Regulation Act 2014).' The Applicant also provide the residents food (same food/dish for all)

### **Questions raised:**

1. Whether the hostel and residential is required accommodation extended by the Applicant hostel would be eligible for exemption under Entry 12 of Exemption Notification No. 12/2017-Central Tax (Rate) dated 28.06.2017?  
*Exemption Entry: Services by way of renting of residential dwelling for use as residence*
2. Whether the Applicant is required to take GST registration at all?
3. Whether the incidental activity of supply of in-house food would also be eligible for exemption being in the nature of composite supply?

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

1. The AAR has held that hostel accommodation is not equivalent to residential accommodation and hence the services supplied by the Applicant would not be eligible for exemption.
2. Yes, the activity of running a ladies residential hostel is liable to 18% GST and GST registration would be required to be taken for the same.
3. The incidental activity of supplying food will also leviable to GST at 18% considering hostel accommodation as principal activity for such composite supply of services.

### **SBGCO comments:**

The AAR seems to have down played the following facts which were highlighted to them:

- a. importance of nature of permanent stay provided by the hostel (indicating residence)
- b. the building of the Applicant used as hostels are 'residential buildings' as per the Zoning Regulations of Tamil Nadu Combined Development and Building Rules, 2019.
- c. Decision of the Hon'ble High Court of Karnataka in the case of Taghar Vasudeva Ambrish Vs. Appellate Authority for Advance Ruling where the HC held that hostel is a residential dwelling and it is used for residence for the purposes of GST

Non-consideration of the above critical facts makes the decision of the AAR less reliable especially considering the fact that there is already HC decision on the same issue in the GST period.



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

<b>S N</b>	<b>Due Date</b>	<b>Form</b>	<b>Period</b>	<b>Periodicity</b>	<b>Special Remarks</b>
1.	10.12.2023	GSTR - 7	Nov-2023	Monthly	To be filed by those who are required to deduct TDS under GST
2.	10.12.2023	GSTR - 8	Nov-2023	Monthly	To be filed by those who are required to collect TCS under GST
3.	11.12.2023	GSTR - 1	Nov-2023	Monthly	Taxpayers filing GSTR - 1 monthly
4.	13.12.2023	GSTR - 5	Nov-2023	Monthly	To be filed by a non-resident foreign taxpayer registered in GST
5.	13.12.2023	GSTR - 6	Nov-2023	Monthly	To be filed by an ISD
6.	13.12.2023	IFF	Nov-2023	Monthly	To be filed by those under QRMP Scheme (optional)
7.	20.12.2023	GSTR - 3B	Nov-2023	Monthly	To be filed by Taxpayer filing monthly GSTR 3B
8.	20.12.2023	GSTR - 5A	Nov-2023	Monthly	To be filed by non-resident Online Information and Database Access or Retrieval (OIDAR) services provider
9.	25.12.2023	PMT - 06	Nov-2023	Monthly	Challan to be filed for payment by those under QRMP Scheme
10.	31.12.2023	GSTR-9	FY 2022-23	Annual	To be filed by those having Aggregate T/o of > 2Cr in FY 2022-23
11.	31.12.2023	GSTR-9C	FY 2022-23	Annual	To be filed by those having Aggregate T/o of > 5Cr in FY 2022-23



## **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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<https://chat.whatsapp.com/KJRD8SHyjSK5FUkFj8Of4t>