

SBGCo Connect January 2024

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Greetings to all our readers!

Wishing you all a very Happy New Year!

The end of one process leads to the beginning of the next process. Compliances for FY 2022-23 now come to a close for GST purposes but make no mistake, the Department is fully active w.r.t. adjudication process in relation to FY 2018-19 and to an extent, FY 2019-20 as well. Readers are requested to ensure that their GST portal is regularly checked for department communication, notices and orders so that no compliance remains unchecked. With the revised timelines for issuing notices and adjudicating matters for FY 2018-19 and FY 2019-20, taxpayers are requested to remain vigilant at all times.

Any GTA who wishes to revert back to issuing invoices under RCM mechanism from FY 2024-25, the option to file Annexure VI has been enabled w.e.f. 01.01.2024. Likewise, any GTA who wishes to opt for charging tax under forward charge for FY 2024-25, can now file Annexure V on the GST portal. Any GTA who have already filed declaration in previous year and do not intend to change their tax position, do not require to file another declaration for FY 2024-25.

“Electronic Credit and Re-claimed Statement” was introduced on the GST portal in August 2023 with a view to help the taxpayers in tracking their ITC that has been reversed in Table 4B(2) and thereafter re-claimed in Table 4D(1) and 4A(5). Previously, the last date to report and update opening balance was 31st December 2023, however, the opportunity to declare such opening balance for ITC reversal in the statement has been extended till 31st January, 2024. The said update can be accessed by clicking on the link [here](#).

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 January 2024](#)

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

Team SBGCo



A. What's New?

I. Notification issued during this month

- **Additional Time for Department officers to issue Show cause notices & Adjudication Orders for FY 2018-19 and FY 2019-20.**

- The CBIC has extended the timelines for GST Department officers to issue show cause notices and adjudicating order for FY 2018-19 and FY 2019-20 as under:

Year	New due date to issue notice u/s 73	New due date to issue order u/s 73
2018-19	31 Jan 2024 (Old Date - 31 Dec 2023)	30 Apr 2024 (Old Date - 31 Mar 2024)
2019-20	31 May 2024 (Old Date - 31 Mar 2024)	31 Aug 2024 (Old Date - 30 Jun 2024)

Notification No. 56/2023 - GST dated 28.12.2023

II. Other Updates

- **Instruction issued to GST officers in relation to Judgment of the Hon'ble Supreme Court in the case of Northern Operating Systems Pvt Ltd**

- The decision of Hon'ble Supreme Court in the case of Northern Operating Systems Pvt Ltd relates to secondment of employees of overseas group company in the Indian entity. The Hon'ble Supreme Court, considering the unique facts in the above case, had held that such arrangement was liable to Service Tax.
- The GST officials have been issuing notices u/s 74 (alleging suppression and/ or fraud) of GST and proposing demand of tax under RCM under GST as well.
- Hence, the CBIC has issued this present instruction letter for the officers guiding them to not follow the decision of the Supreme Court blindly in all cases, but verify the arrangements in each case.
- The said communication also notes that where the investigation indicates that there is material evidence of fraud or suppression of fact to evade tax on the part of the taxpayer, provisions of section 74(1) of CGST Act may be invoked for issuance of show cause notice, and such evidence should also be made a part of the show cause notice.

SBGCo Comments

The said instruction from the CBIC is a welcome move because it acknowledges the fact that department officers have been issuing notices only on the basis of hon'ble Supreme Court decision without verifying facts and whether the decision of the hon'ble Supreme Court would apply in each of the case.

This communication should ensure that GST officers proceed with due verification and only issue notices alleging suppression and/ or fraud in cases in cases where the investigation actually reveals such a proposition.



- **E-way bill generation provisions become stringent**

HSN reporting in E-way bill to be based on Annual Aggregate Turnover.

- The E-way bill portal will mandatorily require 4 / 6-digit HSN codes for goods based on the Annual Aggregate Turnover of the taxpayer.
- If the Annual Aggregate Turnover of the taxpayer is less than INR 5 Crores, then minimum 4-digit HSN code would be required in E-way Bills. In all other cases (i.e., turnover greater than 5 Crores) minimum 6-digit HSN code would be required in E-way Bills.
- This validation will be implemented in e-way bill System from 1st February 2024.
- The said update can be accessed by clicking on the link [here](#).

SBGCo Comments

The above compliance was made effective for GST returns in 2021 and hence, it should be a smoother transition for taxpayers to comply with the above requirements. Reporting 4/6-digit HSN will also ensure that HSN details in tax-invoices and E-way Bills shall be in sync with each other.



B. Recent Decision from the Judiciary:

1. Jitendra Kumar vs. State of UP & Others [2023-VIL-940-ALH]

Background facts:

The goods were detained by the Department while being transported from Patna to Aligarh on the ground that the goods were not accompanied by the valid documents. Subsequently, while issuing the SCN to complete the adjudication process, the Department substituted the reason mentioned in the detention order by a different reason that a few vendors appearing in the Form GSTR 2A have their GST registrations suspended or cancelled.

Key Issue Raised:

Can the Department change reasons at will to complete adjudication process?

Gist of the Decisions:

The Hon'ble HC of Allahabad held that the Revenue cannot beat around the bush and keep changing the goal post at each stage. Once the reasons are recorded for detaining the goods viz., goods were not accompanied by valid documents, the subsequent SCN could not be silent on such grounds and/or raise fresh issue to continue detaining the goods. The Department cannot change their stand at per their own whims and fancies and/or supplemented by a different reason or ground. Such action is not justified.

The Hon'ble HC order release of the detained goods since the same were accompanied by valid documents and set aside the detention order, subsequent SCN and the entire adjudicating process thereafter.

SBGCO Comments:

As an aggrieved person suffering from adverse action of the Revenue Department, it is important that the reason(s) for such adverse action is known well in advance as it is important to build the defence around such reason(s). It would be a complete failure of the justice system if the Revenue Department is allowed to change their reason/add a new reason because that will put the aggrieved person in a position wherein the defence prepared would become infructuous. Hence, the Department must prepare all possible grounds/ reasons for their action at the start itself and stick to the same right throughout for a fair and valid adjudication process. The HC has upheld this principle in the above decision and ensured that justice is not defeated by virtue of faulty proceedings.

2. Chetankumar Jasraj Palgota HUF vs. State of Maharashtra [2023-TIOL-1733-HC-MUM-GST]

Background facts:

During the course of the 'Search' procedure, the petitioner deposited Rs. 1 Crore with the GST department under protest. Subsequently, SCN was issued and the same was adjudicated against the petitioner. The petitioner preferred an appeal against the said order and requested that the amount deposited 'under protest' during the 'search' procedure should be adjusted against the pre-deposit requirements of Section 107(6) before filing of an appeal. The Appellate Authority rejected the appeal on the grounds of non-payment of 10% of tax confirmed.



Key Issue Raised:

Can amounts deposited 'under protest' be considered as pre-deposit for filing of an appeal?

Gist of the Decisions:

The Hon'ble HC observed that right to appeal is a fundamental right guaranteed under the Constitution of India. Such right cannot be illusory and cannot be made ineffective by virtue of complex procedural formalities. On the day of the deposit of tax, there was no demand of tax against the petitioner and hence, there was no valid authority under the law to retain such amounts paid under protest. Hence, the HC permitted the deposit of tax under protest as valid pre-deposit and ordered the Appellate Authority to accept the appeal and proceed to adjudicate the same on merits only.

SBGCO comments:

The above judgment is in line with another decision on similar facts issued by Bombay HC in the case of Vinod Metal Vs. State of Maharashtra [(2023) 9 Centax 178 (Bom.)]. The HC's decision is a relief for many taxpayers who may be forced to pay pre-deposit again only because there is no online mechanism to adjust amount of tax paid under protest against the pre-deposit requirements of the GST law, The HC has understood the complexities of filing online appeal and accordingly granted such a relief for the taxpayers.

3. M/s. Thirumalai Sales Corporation vs. Asst. Commissioner of State Tax [2023-TIOL-1695-HC-MAD-GST]

Background facts:

Petitioner's GST registration was cancelled by the Department for non-filing of returns. However, subsequent to cancellation, the Department issued show cause notice for demand of tax. The Order was passed ex-parte based on the show cause notice issued on the GST portal.

Key Issue Raised:

Can a SCN be issued via the common GST portal by the Department after the cancellation of the GST registration by the Department themselves?

Gist of the Decisions:

The Hon'ble High Court held that the present adjudication suffers from violation of principles of natural justice. This is because, once the GST registration of the taxpayer was cancelled by the Department, serving SCN on the common portal thereafter cannot be held to be a valid mode of communication. All communications after cancellation of registration such as issuance of a SCN, intimation of personal hearing and passing of an order should have been made via physical mode. The HC ordered setting aside of the impugned order and allowed for one more opportunity to the petitioner to comply with the SCN and attend the Personal Hearing in this regard.

SBGCO comments:

The Department should ensure that SCN and all subsequent communications are effectively served on the taxpayers and that the taxpayers have been given proper opportunity to respond to the notice/appear for a personal hearing. The above decision highlights that in the



event of cancelled GST registration, the communication should be made via physical mode to ensure effective service of the communication.

4. M/s. Savvy Fabrics vs. Union of India [2023-VIL-928-BOM]

Background Facts:

SCN u/s 74 was issued to the taxpayer. The taxpayer duly responded to the SCN. While passing the Order there is no 'discussion' or 'findings' given by the adjudicating authority considering the submissions made by the taxpayer. The Order also confirmed penalty u/s 122 which was never a part of the SCN issued.

Issue Raised:

Whether such an Order is legal and valid?

Gist of the Decision:

The Hon'ble High Court squashed the present Order for the single reason that "Findings" section of the Order did not discuss any of the submission made by the taxpayer. There were no rebuttals against the contentions raised by the taxpayer. The Officer could not have confirmed penalty which was never raised in the SCN as well. This, according to the High Court, was clearly a case of non-application of mind on the part of the Officer and the HC directed the Officer to issue a fresh order with appropriate reasons recording the case of the taxpayer.

5. Rathore Building Materia vs. Commissioner of State Tax [2023-TIOL-1726-HC-ALL-GST]

Background Facts:

SCN issued for non-filing of return and contained the recitals that if the returns were furnished in the next 15 days, then the show cause notice was liable to be dropped. The petitioner complied with the notice and filed their return within 15 days and also submitted their reply to the impugned SCN. However, after the filing of the said return, the adjudicating officer imposed a penalty u/s 125 of the CGST Act while making contrary observation in the Order regarding submission of reply.

Issue Raised:

Whether such Order are just and proper?

Gist of the Decision:

The Hon'ble High Court held that the said order has recorded contrary findings whereby at one place it accepts that the taxpayer submitted their reply but while confirming the demand of penalty has observed that no reply was submitted by the taxpayer. The HC held that such an order is vitiated by non-application of mind.

Further, when the SCN states the condition that the notice shall be dropped once the return is filed within the prescribed due date, then there is no lawful justification to confirm penalty when the said condition was duly complied by the taxpayer.



SBGCO comments for Sr. No 4 & 5:

These are classic examples of clear exploitation of power available with Department.

In one case, the officer has not given appropriate reason for confirming the demand, while in the other case, contrary observations have been recorded in a single order while imposing penalty without any valid legal reason. Such adjudication processes cannot withstand judicial scrutiny, as seen above. The Hon'ble HC judgements, in the both the above cases, should serve as a timely wake up call for the CBIC to issue clear guidelines for the Department officers to follow the procedure prescribed under the law and ensure orders are issued which appropriately consider the submissions of the taxpayer and the same is also duly recorded in all the orders.

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C. Recent Decisions from Advance Authority

1. Hilti Manufacturing India Pvt Ltd [Order No. GUJ/GAAR/R/2023/26 = 2023-VIL-221-AAR]

Background facts:

The Applicant is engaged in the manufacture and supply of diamond cutting tools, other innovative tools required by the construction industry and providing in-house research & development service on diamond inserts. The Applicant carries out R&D activities on the products/ samples sent by their customers who are situated outside India and thereafter submits a detailed report to them which consists of findings, performances, parameters, know-how, inventions, developed processes, objects, etc.

Key Question raised:

➔ Whether the following activity of R&D can be treated as “export of services” when the receipt is in foreign convertible exchange?

Activity: The Applicant develops a prototype and some of the materials consumed in the prototype are provided by the recipient. The Applicant performs R&D on such prototype for developing new products & process and such results are communicated to the recipient.

Gist of the Ruling:

The AAR has held that all the conditions of “export of service” are satisfied in the present case viz., recipient is outside India, supplier is in India, supplier and recipient are not establishments of distinct entities, receipt of foreign convertible exchange and place of supply (PoS) is outside India. While discussing the aspect of place of provision of supply, the AAR has held that the activities of R & D would be covered by Section 13(2) of the IGST Act i.e, PoS shall be location of recipient. Even though certain materials for prototypes are provided by recipient, the same get consumed. The AAR has categorically held that such activity would not be covered by section 13(3)(a) of the IGST Act.

SBGCO comments:

The above AAR accepts that R&D activities which involves receipt of certain materials from the recipient is also covered by Section 13(2) of IGST Act and the PoS shall be location of the customer. This AAR is a welcome decision that looks at the actual contractual agreement and the end result/ outcome and the nature of services provided by the applicant and not merely the physical movement of the goods.

Relevant provisions for reference:

Section 13(2): The place of supply of services except the services specified in sub-sections (3) to (13) shall be the location of the recipient of services

Section 13(3)(a): The place of supply of the following services shall be the location where the services are actually performed namely, services supplied in respect of goods which are required to be made physically available by the recipient of services to the supplier of services, or to a person acting on behalf of the supplier of services in order to provide the services:

Provided that when such services are provided from a remote location by way of electronic means, the place of supply shall be the location where goods are situated at the time of supply of services



D. GST Compliance chart for January 2024

S N	Due Date	Form	Period	Periodicity	Special Remarks
1.	10.01.2024	GSTR - 7	Dec 2023	Monthly	To be filed by those who are required to deduct TDS under GST
2.	10.01.2024	GSTR - 8	Dec 2023	Monthly	To be filed by those who are required to collect TCS under GST
3.	11.01.2024	GSTR - 1	Dec 2023	Monthly	Taxpayers filing GSTR - 1 monthly
4.	13.01.2024	GSTR - 5	Dec 2023	Monthly	To be filed by a non-resident foreign taxpayer registered in GST
5.	13.01.2024	GSTR - 6	Dec 2023	Monthly	To be filed by an ISD
6.	13.01.2024	GSTR - 1	Oct 2023 to Dec 2023	Quarterly	To be filed by those under QRMP Scheme
7.	18.01.2024	CMP - 08	Oct 2023 to Dec 2023	Quarterly	To be filed by Composition Dealer (Payment of Self-assessed tax)
8.	20.01.2024	GSTR - 3B	Dec 2023	Monthly	To be filed by Taxpayer filing monthly GSTR 3B
9.	20.01.2024	GSTR - 5A	Dec 2023	Monthly	To be filed by non-resident Online Information and Database Access or Retrieval (OIDAR) services provider
10.	22.01.2024	GSTR - 3B	Oct 2023 to Dec 2023	Quarterly	To be filed by those under QRMP Scheme (#)
11.	24.01.2024	GSTR - 3B	Oct 2023 to Dec 2023	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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