



SBGCo Connect October 2023

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Greetings to all our readers!

We would like to remind our readers that GSTR 3B of September 2023 is the last return to give annual effect of Rule 42/43 for FY 2022-23. Any additional reversal or reclaim under Rule 42-43 for FY 2022-23 should be given effect to in GSTR 3B of September 2023. Further, our readers must also take note that in case any of their vendor has filed GSTR 1 but not filed GSTR 3B for the same period, then ITC to that extent is required to be reversed and such ITC can only be claimed after such vendor has filed his GSTR 3B (Rule 37A).

Additionally, it important that taxpayers remind their vendors for existing mismatches/ disputes in values/ non-reflection of invoices in relation to ITC pertaining to FY 2022-23 at the earliest. The vendor can only give effect to amendments pertaining to invoices of FY 2022-23 in GSTR 1 of September 2023 and October 2023. Hence, taxpayers should ensure ITC of FY 2022-23 is reflected in their accounts before filing GSTR 3B of October 2023 to ensure valid claim of ITC.

In case you missed to attend our virtual session on recent updates in GST held on 25.09.2023, then you can watch the same on our YouTube channel by clicking [here](#).

E-way Bill and E-invoice systems are also coming up with a few changes which are summarized below:

- From 1st November 2023, taxpayers with AATO greater than or equal to Rs. 100 crores shall not be allowed to report invoices older than 30-days on the E-invoice portal. This shall apply to all documents which require generation of IRN including Credit notes and Debit notes. The detailed advisory can be accessed by clicking [here](#).
- 2-Factor Authentication for logging-in on E-invoice and E-way bill portal has been implemented for taxpayers with AATO greater than or equal to Rs. 100 crores. Such limit is proposed to be reduced to Rs. 20 Crores w.e.f. 01st November 2023. Hence, all such taxpayers must ensure that correct mobile number is updated on these portals to ensure OTPs are received by the correct individual for every log-in attempt.
- The implementation of mandatory use of 6-digit HSN codes for all E-invoice and E-way bills planned from 01st October 2023 has been postponed by the GSTN for now.

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 October 2023](#)

All 19 sessions of the GST Back-to-Basics series are available on our YouTube Channel, which can be accessed by clicking [here](#).

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

Team SBGCo



A. What's New?

I. Central Goods and Services Tax (Amendment) Act, 2023; Integrated Goods and Services Tax (Amendment) Act, 2023 & related changes for online money gaming.

- Central Goods and Services Tax (Amendment) Act, 2023
- New concepts and definitions introduced in the CGST Act, namely:
 - a. online gaming [Section 2(80A)],
 - b. online money gaming [Section 2(80B)],
 - c. specified actionable claims [Section 2(102A)], and
 - d. virtual digital asset [Section 2(117A)]
- “Online money gaming” includes online gaming where players pay/deposit money or money’s worth by way of virtual digital assets in expectation of winning money or money’s worth irrespective of the fact that it is based on skill or chance or both.
- “Specified actionable claims” include betting, casino, gambling, horse racing, lottery or online money gaming.
- Virtual digital asset definition relies on the meaning provided under Section 2(47A) of the Income Tax Act, 1961.
- Schedule III has been amended whereby all actionable claims are outside the scope of GST except “Specified actionable claims.” Hence, betting, casino, gambling, horse racing, lottery and online money gaming would now be outside Schedule III and thus liable to GST as supply of “goods.”
- Compulsory Registration under Section 24 of the CGST Act now includes ‘*every person supplying online money gaming from a place outside India to a person in India*’
[Central Goods and Services Tax (Amendment) Act, 2023 made effective from 01.10.2023 vide Notification 48/2023 – Central Tax dated 29.09.2023]

SBGCo Comments

The CGST Act is now empowered to treat online money gaming as a taxable supply by virtue of above amendments to the GST law including the exclusion from Schedule III. The GST law now requires compulsory registration to even those entities who are located outside India but provide online money gaming to ensure level-playing field for every business involved in this booming online entertainment world w.r.t. applicability of GST Law in this regard.

- Relevant CGST / CGST Rate notifications issued this month giving effect to various amendments to the law to bring online money gaming within the ambit of GST.
- The Government is now empowered to provide specific valuation rules for ‘supply of online money gaming’, ‘supply of online gaming other than online money gaming’ and ‘supply of actionable claims in casinos’ as per the powers granted by Section 15(5) of the CGST Act, 2017

Notification 49/2023 – Central Tax dated 29.09.2023



- *'Every person supplying online money gaming from a place outside India to a person in India'* are now treated in a similar fashion as that of persons located outside India providing OIDAR services and they can apply for GST registration without obtaining PAN in India [amendment to Rule 8(1) of CGST Rules]
- Provisions for grant of registration as provided in Rule 14 applicable to persons providing OIDAR services shall also apply to *'every person supplying online money gaming from a place outside India to a person in India.'*
- New Valuation Rules introduced for *"Value of supply in case of online gaming including online money gaming"* (Rule 31B) & *"Value of supply of actionable claims in case of casino"* (Rule 31C)
- Relaxation in invoice rules for complete address as provided to persons providing OIDAR services shall also be available to all suppliers providing online money gaming as well. [amendment to Rule 46(f) of CGST Rules]
- Form GSTR 5A will now be applicable to *'every person supplying online money gaming from a place outside India to a person in India'* & *'persons OIDAR services'* [amendment to Rule 64 and relevant Form GSTR 5A of CGST Rules]

Notification 50/2023 - Central Tax dated 29.09.2023

- "Specified actionable claims" is introduced as entry no 227A in Schedule IV of rate notification thereby levying GST rate of 28% (14% - CGST & 14% - SGST) on such supply.

Notification 11/2023 - Central Tax (Rate) dated 29.09.2023

- Integrated Goods and Services Tax (Amendment) Act, 2023

- Definition of *"OIDAR services"* is amended to exclude online money gaming from the scope of such definition [amendment to Section 2(17) of the IGST Act]
- Actionable claims are goods but import of online money gaming (i.e., supply of online money gaming from a place outside India to a person in India) will not attract IGST as the import of goods attract in India at the customs station. Supply of online money gaming from a place outside India to a person in India will attract IGST in accordance with Section 5(1) of the IGST Act. [amendment to Section 5(1) of the IGST Act read with Notification No. 03/2023 - Integrated Tax dated 29.09.2023]
- Special provisions for "specified actionable claims" supplied by person located outside India introduced vide new Section 14A of the IGST Act.
- As per the new Section 14A of the IGST Act, tax on such supply shall be payable by supplier of online money gaming. They can obtain a single registration under GST under the Simplified Registration scheme. The law also provides any person located in the taxable territory representing such supplier to register under GST and pay tax on behalf of such supplier.

Integrated Goods and Services Tax (Amendment) Act, 2023 made effective from 01.10.2023 vide Notification 02/2023 - Integrated Tax dated 29.09.2023



- “Specified actionable claims” is introduced as entry no 227A in Schedule IV of rate notification thereby levying IGST rate of 28% on such supply.

Notification 14/2023 – Integrated Tax (Rate) dated 29.09.2023

SBGCO Comments

The GST Act and Rules have been suitably amended now to levy and collect tax from all the persons providing online money gaming (either located in India or outside India) and suppliers of actionable claims in casinos. The decisions taken by GST Council in their 50th Meeting in July 2023 w.r.t. online gaming have been given effect to and the above provisions have been made effective from 01.10.2023.

II. IGST under RCM on freight component of CIF consignments in the hands of importer now officially abolished.

- In the case of Mohit Minerals [2022-VIL-30-SC], the Supreme Court held that IGST under RCM cannot be demanded from importer for CIF consignments imported into India by artificially bifurcating freight value from the value of composite supply of goods.
- The Government has honoured the decision of the Supreme Court and deleted Entry 10 in the RCM notification no. 10/2017 – Integrated Tax (Rate) dated 28.06.2017.
- Similar amendments have been carried out in IGST Rate notification (Notification no. 08/2017 – Integrated Tax (Rate) dated 28.06.2017) wherein entry 9(ii) has been modified to exclude such transaction & IGST exemption Notification (Notification no. 09/2017 – Integrated Tax (Rate) dated 28.06.2017) wherein Entry 10 has been suitably amended.

Notification No. 11/ 2023 – Integrated Tax (Rate) dated 26.09.2023; Notification No. 12/ 2023 – Integrated Tax (Rate) dated 26.09.2023; and Notification No. 13/ 2023 – Integrated Tax (Rate) dated 26.09.2023

SBGCO Comments

The Governments position now clearly aligns with that of the decision of the Hon’ble Supreme Court regarding non-applicability of GST on services provided by person located in non-taxable to person located in non-taxable territory for transportation of goods by vessel from a place outside India upto customs station in India.



B. Recent Decision from the Judiciary:

1. Diya Agencies vs. State Tax Officer [2023-TIOL-1199-HC-KERALA-GST]

Background facts:

Out of the total claim of ITC by the Petitioners, partial ITC was rejected by assessing officer since the invoice for which such ITC was claimed did not appear in Form GSTR-2A for FY 2017-18.

Key Issue Raised:

Whether the Petitioner's claim of ITC be disallowed on the grounds that such ITC is not reflecting in Form GSTR 2A for FY 2017-18?

Gist of the Decisions:

The Hon'ble HC held that merely because invoice is not reflecting in Form GSTR 2A of FY 2017-18, denial of ITC in the hands of the petitioner is unsustainable. The Hon'ble HC remanded the matter back to the assessing officer to examine the evidences being submitted by the petitioner and also commented that if the officer is convinced regarding the bonafide and genuine nature of the transaction, then ITC should be allowed.

SBGCO Comments:

In the previous month's newsletter, there were two contradictory decisions of the two different High Courts for the similar issue. This month, Kerala HC has passed an order holding that ITC reflecting in GSTR 2A is not a mandatory condition for claim of ITC. This also appears to fall in line with the recent GST circulars (Circular No. 183/15/2022-GST dated 27.12.2022) which allow for submission of letters/ certificates to establish genuine and bonafide claim of ITC on account of certain errors at the end of supplier.

2. Gobinda Construction & Anr. vs. Union of India & Anr. [2023-TIOL-1178-HC-PATNA-GST]

Background facts:

Form GSTR 3B for Feb-2019 and March 2019 was filed belatedly on 23.10.2019 and 07.11.2019 respectively, by the petitioner. The assessing officer rejected the claim of ITC in these two returns on the grounds that ITC for FY 2018-19 claimed in these belated returns is beyond the time limit prescribed in Section 16(4) of the CGST Act.

Issue Raised:

Whether the time limit to claim ITC for a particular financial year prescribed in Section 16(4) of the CGST Act to claim ITC upto September of next financial years is constitutionally valid?



Gist of the Decision:

The HC has held that conditions (regarding time limit to claim ITC) placed in Section 16(4) of the CGST Act are required to be fulfilled mandatorily since claim of ITC is not unconditional. The Hon'ble HC, relying on the decisions of Jayam and Company vs. Assistant Commissioner & Anr. [2016-TIOL-128-SC-VAT] & ALD Automotive Private Limited vs. Commercial Tax Officer & Ors. [2018-TIOL-385-SC-VAT], held that Section 16(4) of the CGST Act, 2017 is neither arbitrary nor violative of the right guaranteed to a dealer under Article 19(1)(g) & and Article 300-A of the Constitution of India. The HC held that conditions of Section 16(1) and (2) also do not override the provisions regarding time limit for claim of ITC in Section 16(4) of the CGST Act and they should be read harmoniously.

SBGCO Comments:

One question that supposedly appears to have not been raised before the HC is whether ITC is disclosed or claimed in the returns? There are a few decisions from the erstwhile excise regime which have held that claim of credit is the date of accounting in the books and not disclosure in the returns. This question will likely be taken up before the Hon'ble SC again but until then, Department will use this case to disallow the claim of ITC on account of delayed filing of Form GSTR 3B.

3. Reliance Industries Ltd vs. Union of India [2023-TIOL-1200-HC-AHM-CUS]

Background Facts:

While filing shipping bills, the Petitioner missed to put a tick mark/ check the box for claim for benefit of an export promotion scheme in 68 of the total 55,000 shipping bills filed. These Bills were inadvertently filed with default status - 'No' against the row for claim of benefit of an export promotion scheme.

Issue Raised:

Can such inadvertent mistake in 0.12% of the total shipping bills disentitle the petitioners to claim benefit of Merchandise Exports of India Scheme (MEIS)?

Gist of the Decision:

The Hon'ble HC held that the benefit of MEIS will not be ineligible to the petitioner merely because there was an inadvertent mistake in clicking "NO" instead of "YES" in the 68 shipping bills. The HC did not accept the arguments of the respondent that marking "YES" or "NO" is a substantive requirement and not a procedural requirement. Relying on other HC decisions, the Gujarat HC allowed the application of MEIS to the petitioner for the 68 Shipping Bills in question.

SBGCO Comments:

When the taxpayer has done everything correctly, including filing of application with all due requirements, minor procedural lapse should not be a hinderance to claim the benefits legally granted under the law. The above principal of upholds that substantial compliance and underlying intention of the provisions of the law must be given importance against minor non-compliances/ inadvertent mistakes.



4. KPS & Company vs Pr. Commissioner, CGST & C.Ex., Chennai [2023-TIOL-1123-HC-MAD-GST]

Background Facts:

The Petitioner had informed the department regarding change of place of business, however, SCN was issued to the old address which remained unserved on the petitioner. Personal hearing notice was also issued on the old address which also remained unserved on the petitioner. The petitioner only came to know about the adverse order when recovery notice was served on the new address.

Issue Raised:

Is the said Order passed in violation of principles of the natural justice?

Gist of the Decision

The Hon'ble HC held that intimation of new address was given by the petitioner before the issuance of the SCN and hence, proceedings were initiated & continued without proper service of notice. Since, petitioner has not been afforded a proper opportunity to show cause against the said allegations in the SCN, the HC set-aside such Order. The HC remanded the matter back to the assessing officer to give petitioner 4 weeks-time to reply and then decide the case on merits after giving due opportunity of personal hearing, thus following the principles of natural justice.

5. M Sathes Kumar vs Dy. State tax officer [2023-TIOL-1131-HC-MAD-GST]

Background Facts:

The Petitioner did not appear for personal hearing on any of the allotted days. However, the petitioner had filed a detailed reply in writing against the SCN issued. The Order was passed without considering the said reply filed by the petitioner.

Issue Raised:

Is the said Order passed in violation of principles of the natural justice?

Gist of the Decision

The Hon'ble HC held even though the petitioner did not appear for the personal hearings, the fact that a reply was submitted before issuance of the order, it should have been considered by the officer while passing such order. The HC remanded the matter back to the officer to give petitioner one more opportunity of personal hearing and pass a speaking order considering the submissions made.

SBGCO Comments (Common for 4 & 5):

The above judgements of Madras HC highlight that Principles of Natural Justice must not just exist on paper but must be followed in practice as well. Without giving due opportunity (proper servicing of notices & considering the details submissions), any order passed would not uphold legal scrutiny. Hence, taxpayers must neither take the opportunity for submission/hearing for granted nor sit in silence when notices and orders are issued without getting a fair opportunity.



C. Recent Decisions from Advance Authority

1. Coral Manufacturing Works India Private Ltd [Order No. AAAR/01/2023-AR (Tamil Nadu) = 2023-VIL-29-AAAR]

Background facts:

The Appellant, dissatisfied with the decision of the AAR, preferred appeal before the Appellate Authority for Advance Ruling for eligibility of ITC in relation to construction the integrated factory building. The Appellant is of the view that integrated factory is a 'plant and machinery' itself and AAR has failed to differentiate the conventional factory from the present factory. Hence, appellant is of the view that entire ITC is eligible for claim of credit including civil work.

Key Question raised:

Whether the Appellant is eligible for ITC on steel, cement, structures, pre-cast and other consumables used for the purposes of constructing the integrated factory building?

Gist of the Ruling:

The AAAR held that the integrated factory building per se cannot to be categorized as plant machinery, but overhead crane and its proportionate structural support would be categorized as plant and machinery. Hence, the Appellant would be eligible for ITC proportionate to the extent of structural support erected in relation to overhead crane alone subject to fulfilment of conditions stipulated in section 17(5)(c) and (d) of the CGST Act, 2017.

SBGCO comments:

The AAAR has analysed the definition of 'plant and machinery' provided under Section 17(5) of the CGST Act and categorically disallowed the claim of the Appellants that entire factory is a unique 'plant and machinery'. The AAAR has only allowed proportionate ITC to the extent of crane and structural support since only such crane would fall under the scope of 'plant and machinery.' It remains to be seen in GST, whether customized / specialized structure (factory/buildings/theatres) could be classified as a 'plant or machinery' when such questions are raised before HC/ SC.

2. Ganga STP Project Private Limited [Order No. 16/WBAAR/2023-24 (West Bengal) = 2023-VIL-173-AAR]

Background facts:

The Applicant has been awarded a Water Treatment project jointly by the National Mission for Clean Ganga (NMCG) & Kolkata Metropolitan Development Authority (KMDA). The Payment schedule under the contract states that 40% of the Capex shall be paid by NMCG during the period of construction and balance 60% of Capex shall be paid in 60 equal quarterly instalments over a 15- year period along with an interest on the 60% balance Capex payment, at an interest rate linked to SBI MCLR.

Questions raised:

Whether interest on 60% of the capex, payable over and above on the consideration value at the rate linked to SBI MCLR attracts the levy of GST or not?



Gist of the Ruling:

The AAR has held that such interest will be included in value of supply in terms of Section 15(2)(d) of the CGST Act since such payment of interest is linked to payment of consideration against supply of services by the Applicant. Hence, GST will be leviable at the same rate on the interest component as that of the principal supply.

SBGCO comments:

The AAR has interpreted Section 15(2)(d) to include interest on instalment payments as part of taxable value of services which have been agreed upon at the time of contract itself. The AAR has loosely considered agreed 'instalment payments' as 'delayed payments' for the purpose of Section 15(2)(d) of the CGST Act.

3. Geekay Wires Ltd [TSAAR Order No. 15/2023 = 2023-VIL-185-AAR]

Questions raised:

Whether already claimed ITC is required to be reversed in the following circumstances:

- a. When the raw materials purchased are already used in the manufacture of finished goods and the finished goods are destroyed in the fire accident completely
- b. When the raw materials procured are lost in the fire accident before use in manufacture of finished goods
- c. When the destroyed finished goods can be sold as steel scrap in the open market and output tax liability on such supply of scrap is paid

Gist of the Ruling:

The AAR has applied the principle of "*ex visceribus actus*" (viz., every part of the statute must be construed within the four corners of the Act) and observed that ITC is available to a taxable person only when such taxable person makes taxable supplies. The AAR has analysed Section 17(5) of the CGST Act and held that the ITC to the extent of manufactured goods destroyed or inputs destroyed is not available to the applicant. Similarly, sale of destroyed goods are also not eligible for ITC.

SBGCO comments:

In our view, interpretation of Section 17(5)(h) of the CGST Act must be strictly applied. We believe that ITC can be disallowed only 'on' those input goods which are lost, stolen, destroyed. When the Final product is destroyed, the identity of inputs/ raw materials is actually lost and hence, ITC for such inputs/ raw materials need not be reversed. This view was upheld in Maharashtra by AAR in the case of General Manager Ordnance Factory Bhandara [2019-VIL-171-AAR]. There is a thin line of difference between the two interpretations and it seems that this is another issue will require intervention of the higher courts to decide eligibility of ITC on Raw materials/ inputs in case finished products are destroyed/ lost.



D. GST Compliance chart for October 2023

S N	Due Date	Form	Period	Periodicity	Special Remarks
1.	10.10.2023	GSTR - 7	Sept 2023	Monthly	To be filed by those who are required to deduct TDS under GST
2.	10.10.2023	GSTR - 8	Sept 2023	Monthly	To be filed by those who are required to collect TCS under GST
3.	11.10.2023	GSTR - 1	Sept 2023	Monthly	Taxpayers filing GSTR - 1 monthly
4.	13.10.2023	GSTR - 5	Sept 2023	Monthly	To be filed by a non-resident foreign taxpayer registered in GST
5.	13.10.2023	GSTR - 6	Sept 2023	Monthly	To be filed by an ISD
6.	13.10.2023	GSTR - 1	July 2023 to Sept 2023	Quarterly	To be filed by those under QRMP Scheme
7.	18.10.2023	CMP - 08	July 2023 to Sept 2023	Quarterly	To be filed by Composition Dealer (Payment of Self-assessed tax)
8.	20.10.2023	GSTR - 3B	Sept 2023	Monthly	To be filed by Taxpayer filing monthly GSTR 3B
9.	20.10.2023	GSTR - 5A	Sept 2023	Monthly	To be filed by non-resident Online Information and Database Access or Retrieval (OIDAR) services provider
10.	22.10.2023	GSTR - 3B	July 2023 to Sept 2023	Quarterly	To be filed by those under QRMP Scheme (#)
11.	24.10.2023	GSTR - 3B	July 2023 to Sept 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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