



SBGCo Connect – October 2024

S B Gabhawalla & Co
Chartered Accountants



Greetings to all our readers!

As we step into the vibrant festive season of October 2024, with Navratri, Dussehra, and Diwali lighting up our days, here's wishing that the joyful energy, festive spirit, and positivity of these celebrations fill your homes and workplaces with happiness and success. May this season bring you the brightest and most fulfilling moments, both personally and professionally!

We would like to remind our readers that the GSTR 3B for September 2024 is the final return to apply the annual adjustments under Rule 42/43 for the financial year 2023-24. Any additional reversals or reclaims under these rules for FY 2023-24 must be reflected in this return. Additionally, as per Rule 37A of the CGST Rules, if a vendor has filed GSTR 1 but not GSTR 3B for any tax period of FY 2023-24, the corresponding ITC must be reversed in the GSTR 3B of September 2024. ITC can be reclaimed after the vendor files their GSTR 3B making payment of tax to the Government.

The GSTN has announced that it will be soon launching new GSTN e-Services app which will provide the following features to all the users (without requiring to create account/ login on the app) such as, verify e-invoices, GSTIN search, return filing history and so on.

The GSTN has also informed that the Parcel Management System (PMS) of Indian Railways has now been integrated with the E-Way Bill (EWB) system. This integration would facilitate seamless transfer of RR No./Parcel Way Bill (PWB) data from Railways to e-way bill portal, ensuring better traceability and compliance. Hence, the GSTN portal has issued guidelines for ensuring that correct PWB number or RR No. is furnished in the e-way bill Part-B on EWB Portal. The said guidelines can be accessed by clicking [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. [GST Compliance Chart for the month of October 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

- **Finance Act, (No.2) 2024 – effective dates notified.**
 - The Government has notified two dates for implementing the provisions of the Finance Act, (No. 2) 2024 (Finance Bill became Act on 16th August after receiving the President's assent)
 - For provisions relating to introduction of Section 16(5), Section 16(6) and amendments pertaining to Section 171 (Anti-profiteering related cases), the effective date of implementation is 27th September 2024. The detailed explanation for the said provisions are covered by Para 5 and 13 of our Union Budget's analysis, which can be accessed by clicking [here](#).
 - For all other amendments, the Government has notified 01st November 2024 as the effective date of implementation. Our readers can access the same from the above link as well.

Notification no. 17/2024 – Central Tax dated 27.09.2024.

II. Circulars issued during the month

- **Clarification in respect of advertising services provided to foreign clients**

The circular lays down the following clarifications:

- Indian advertising companies offering end-to-end services to foreign clients are NOT considered intermediaries under Section 2(13) of the IGST Act. This is because, the advertising agency would enter into two agreements – (a) With the client located outside India and (b) With the media company to procure media space for display. No agreement of supply of services exists between the Media company and foreign client. The agreements by advertising agency are two distinct agreements and both are treated as principal-to-principal supplies. In such cases, the advertising services shall be treated as export of services provided foreign convertible exchange is earned by the supplier in India.
- The recipient of the advertising services provided by the advertising company in such cases is the foreign client, who is paying the consideration (not the Indian representative nor the target audience)
- Place of supply of advertising services shall be governed by the general rule of Section 13(2) of IGST Act. Performance based place of supply provisions of Section 13(3)(a) and (b) shall not govern advertising services.

SBGCO Comments

This is a very welcome clarification which delves into specifics aspects which are key factors for determining whether the supplier is functioning as a principal or as an intermediary. The analogy explained in the circular to determine which cases can be said to be principal-to-principal agreements and which cases can be said to be intermediary arrangements would be helpful in other cases as well.

Circular No. 230/24/2024-GST dated 10.09.2024.



- **Clarification on the availability of ITC for demo vehicles**

The circular clarifies that:

- Demo vehicles, used by dealers to provide trial runs and demonstrate features to potential buyers, are considered to be used for promoting the sale of similar vehicles. Hence, ITC on these demo vehicles is allowed under the CGST Act, specifically as they fall under the exclusion clause of “further supply of such motor vehicles” provided under Section 17(5)(a) of the CGST Act.
- Capitalization of Demo vehicles shall not hamper the eligibility of ITC provided depreciation is not claimed on the GST amount.
- It is further mentioned that in case demo vehicle, which is capitalized, is subsequently sold by the authorized dealer, the authorized dealer shall have to pay an amount or tax as per provisions of section 18(6) of CGST Act read with rule 44(6) of the Central Goods and Service Tax Rules, 2017

SBGCO Comments

Considering the numerous advance rulings issued with judgements giving both the opinions on eligibility of ITC on this topic, the Government decided to clarify their position regarding claim of ITC on demo vehicles. The authorised dealers will be happy with the clarification provided by this circular, which also seems to be in line with the intent of the law.

Circular No. 231/25/2024-GST dated 10.09.2024.

- **Clarification on place of supply of data hosting services provided by service providers from India to cloud computing service providers located outside India**

The key clarifications provided as summarized hereunder:

- The data hosting service providers (DHSPs) in India enter into an agreement with overseas cloud computing service providers (CCSPs) for providing data hosting services on a web platform through computing and networking equipment. The CCSPs provides cloud-based applications and software services to various end users/ customers/ subscribers. There is no contact/ agreement between DHSPs and end users/ customers/ subscribers. The service to CCSPs by DHSPs is therefore on principal-to-principal basis and DHSPs are not acting as an “Intermediary” in these cases. Hence, place of supply for services provided by DHSPs to CCSPs cannot be determined based on Section 13(8)(b) of the IGST Act.
- Data hosting services provided CANNOT be said to be provided in relation to the goods being made available and hence, place of supply for these services will not be governed by Section 13(3)(a) of the IGST Act.
- Similarly, the data hosting services cannot be said to be provided “in relation to immovable property”. Hence, place of supply in such cases needs to be determined according to the default provision under section 13(2) of the IGST Act, i.e. the location of the recipient of the services.



SBGCO Comments

The circular provides clear guidance on the applicability of place of supply rules for data hosting services. It explains which provisions of the Integrated Goods and Services Tax (IGST) Act, specifically Sections 13(3), 13(4), and 13(5), are not applicable in these cases. This reasoning is valuable not only for data hosting providers but can also serve as a reference for other service providers. By drawing analogies, the circular helps clarify how to determine the correct place of supply for various services, aiding businesses in complying with GST regulations accurately.

Circular No. 232/26/2024-GST dated 10.09.2024.

- **Clarification regarding regularization of refund of IGST availed in contravention of rule 96(10) of CGST Rules, 2017,**

The clarification in this regard, as provided by Government is summarized hereunder:

- Where the inputs were initially imported without payment of IGST and compensation cess but subsequently, IGST and compensation cess on such imported inputs were paid at a later date, along with interest, and the Bill of Entry in respect of the import of the said inputs is reassessed through the jurisdictional Customs authorities, then the IGST, paid on exports of goods, refunded to the said exporter shall not be considered to be in contravention of Rule 96(10) of CGST Rules.

SBGCO Comments

The circular builds on the clarification provided by the insertion of the Explanation to Rule 96(10) of the CGST Rules, which was introduced retrospectively in March 2020. It confirms that if an importer has paid IGST and compensation cess on imports, while only claiming an exemption for Basic Customs Duty, this will not be considered a contravention of Rule 96(10). In such cases, the importer remains eligible for IGST refunds on exports.

Circular No. 233/27/2024-GST dated 10.09.2024.

III. Portal updates

- **Biometric-Based Aadhaar Authentication and Document Verification for Bihar, Delhi, Karnataka, Punjab and Odisha:**

- Certain taxpayers in the above-mentioned states, identified through data analysis and risk parameters, will be required to undergo Biometric-Based Aadhaar Authentication, including photograph capture and verification of original documents at the time of applying for fresh GST registrations. This process is managed by the GSTN and involves the following steps:
 - a. The applicant will receive a link for either OTP-based Aadhaar Authentication or for booking an appointment. The message will include details of the designated GST Suvidha Kendra (GSK) and jurisdiction for Biometric-Based Aadhaar Authentication and document verification.
 - b. During the visit to the GSK, the applicant must bring:



- A copy of the appointment confirmation email.
- Details of the jurisdiction as mentioned in the notification email.
- Original Aadhaar Card and PAN Card.
- Original documents that were uploaded with the application.
- Biometric authentication and document verification will be conducted at the GSK for all individuals as required by the GST application.

The above GSTN advisory is issued on 06.09.2024 for assessees of Bihar, Delhi, Karnataka and Punjab & on 29.09.2024 for the assessees of Bihar.

- **Invoice Management System.**

- The GST portal has issued detailed FAQ on Invoice Management System (IMS) which can be accessed by clicking [here](#).
- Further, our firm had conducted a detailed webinar on the intricacies of IMS. The said webinar is available on our YouTube channel which can be accessed by clicking on the link [here](#).

- **Archival of old GST Return data:**

- On 24th September 2024, the GSTN portal issued an advisory that old return related details (older than 7 years) shall be archived and would not be available for access on the portal in terms with data archival policy.
- However, in view of the requests received from the trade due to the difficulties faced, data has been restored back on the portal and will now be archived after giving advance information.
- As taxpayers, if the old return related data is not saved by the taxpayers, it is advised that filed copy of returns should be downloaded and saved for all the months right from FY 2017-18 onwards (including Form GSTR 9 and 9C).

- **Re-opening of Reporting ITC Reversal Opening Balance:**

- The Taxpayers are provided with one final opportunity to report their cumulative ITC reversal (ITC that has been reversed earlier and has not yet been reclaimed) as opening balance for "Electronic Credit Reversal and Re-claimed Statement", if any, before hard locking the reversal and reclaim ledger.
 - (i) The functionality to report the opening balance will be available from 15th September 2024 to 31st October 2024.
 - (ii) The amendments in declared opening balance will be available till 30th November, 2024.
- Those taxpayers who have correctly reported the opening balance last year, need not take any action.

The said GSTN portal advisory issued on 17.09.2024 can be accessed by clicking on the link [here](#).



B. Recent Decision from the Judiciary:

Category: Eligibility of ITC

1. Chief Commissioner of CGST vs. Safari Retreats Pvt Ltd [2024-TIOL-101-SC-GST]

Background facts:

The respondent constructed a shopping mall for the purposes of letting out premises in the mall to various tenants. The respondent had accumulated ITC amounting to more than Rs. 34 crores which was consumed in the construction of the said mall. The respondent had received a favourable order from the High Court of Odisha which held that ITC on inputs, input services and Capital Goods used for construction of mall shall be eligible for claim of credit since the respondent intended to lease the premises in the mall. The appellant (i.e., Department, in this case), approached the Hon'ble Supreme Court against the decision of the HC of Odisha.

Argument of the Department:

Construction of the mall is covered by Section 17(5)(d) of the CGST Act and hence, the ITC on the same is not eligible for claim of credit. Alternatively, "building" is excluded from scope of "Plant and machinery" and hence, construction of mall is not covered by exclusion provided under Section 17(5)(c) and (d).

Relevant provisions of the law:

"Section 17(5)(c) - *Works contract services when supplied for construction of an immovable property (other than plant and machinery) except where it is an input service for further supply of works contract service;*

Section 17(5)(d) - *Goods or services or both received by a taxable person for construction of an immovable property (other than plant or machinery) on his own account including when such goods or services or both are used in the course or furtherance of business.*

Explanation: For the purposes of this Chapter and Chapter VI, the expression "plant and machinery" means apparatus, equipment, and machinery fixed to earth by foundation or structural support that are used for making outward supply of goods or services or both and includes such foundation and structural supports but excludes—
(i) land, building or any other civil structures;"

Key Issue Raised:

- i. Whether the definition of "plant and machinery" in the explanation of Section 17 of the CGST Act applies to the expression "plant or machinery" used in exclusion part of clause (d) of Section 17(5)?
- ii. If it is held that the explanation does not apply to "plant or machinery", what is the meaning of the word "plant"?
- iii. Whether clauses (c) and (d) of Section 17(5) and Section 16(4) of the CGST Act are unconstitutional?

Gist of the Decisions:

The Hon'ble Apex Court held that the expression "plant and machinery" defined in the explanation under Section 17 is different from expression of "plant or machinery" used in exclusion part of clause (d) of Section 17(5). Hence, what is "plant" must be independently identified in all cases based on facts of each cases using the functionality test. The SC further held that if it is found on facts that a building has been so planned and constructed as to serve



an assessee's special technical requirements, it will qualify to be treated as a "plant." Hence, the SC remanded the matter back to the HC to decide, whether in the present case (based on the peculiar facts), the construction of mall can be treated as a "plant" and thus decide the eligibility of ITC for the construction of such mall.

W.r.t. constitutional validity of Section 17(5)(c), 17(5)(d) and 16(4), the Hon'ble Apex Court held that claiming ITC is a statutory right, not an inherent one. Therefore, the law can establish exceptions, like in Section 17(5), and set conditions, such as in Section 16(4), which must be met for ITC eligibility.

The SC partially allowed the writ petition in the favour of the Department w.r.t. constitutional validity of the legal provisions challenged and remanded the matter back to the HC for deciding on the issue regarding eligibility of ITC based on peculiar facts and the guidelines provided in this judgement.

SBGCO comments:

The Hon'ble SC has now clarified that Section 17(5)(c) limits credit on works contract services, while clause (d) restricts credit on goods and services used for constructing immovable property on its own account and 'own account' would refer to buildings constructed for personal use or conducting business such as office. However, it has only provided guidelines regarding what can be held to be 'plant' for the purposes of Section 17(5)(d) thus leaving the issue open to more varied interpretations (and possibly more litigation!).

Category: issuance of Order after extended deadline

2. Rinkumoni Bordoloi vs. Union of India [2024-TIOL-1600-HC-GUW-GST]

Background facts:

The Order for FY 2018-19 was issued under Section 73 on 04.05.2024 i.e., after the extended deadline of 30.04.2024.

Key Issue Raised:

Whether the Order issued after the extended deadline of 30.04.2024 is valid?

Gist of the Decisions:

The Hon'ble HC held that there is no extension granted for the financial year 2018-19 beyond 30.04.2024. There is no Notification passed under Section 168 A of both the Central Act as well as the State Act extending the timeline beyond 30.04.2024. Hence, the HC set aside the order issued on 04.05.2024 on the ground that the same is beyond limitation and without jurisdiction.

SBGCO comments:

In another decision of the HC of Guwahati [*Barkataki Print and Media Services vs. Union of India (2024-TIOL-1596-HC-GUW-GST)* - covered next], the question was raised regarding validity of the extension issued vide Notification No. 56/2023 - Central Tax. In the present case, the validity of the notification was raised, but merely a petition was moved to set aside the order since it was issued beyond the timelines. Hence, the HC also gave its verdict on the limited question raised before it.

In the present case, it was clear case of violation of the deadline issued by the notification 56/2023- Central Tax dated 29.12.2023. The HC did not hesitate to set aside the order since it was issued after the limitation time prescribed. Hence, taxpayers should also be vigilant for



ensuring that the timelines of adjudication are strictly adhered by the Department and any lapse in the timelines should not go unnoticed.

Category: Validity of Orders issued

3. Barkataki Print and Media Services vs. Union of India [2024-TIOL-1596-HC-GUW-GST]

Background facts:

Adjudication Orders for FY 2018-19 and FY 2019-20 were issued by the department based on extended timelines issued vide Notification No. 56/2023 – Central Tax dated 28.12.2023.

Key Issue Raised:

The present writ petition is filed challenging the issuance of notifications under Section 168A of the CGST Act which extended the timelines for issuing orders for FY 2018-19 and FY 2019-20, thereby challenging the order received for FY 2018-19 and FY 2019-20 based on such extensions.

Gist of the Decisions:

The Hon'ble High Court of Guwahati held that the power under Section 168A can be exercised only when two important conditions are met: recommendation from the GST Council and existence of *force majeure*.

In the present case, there is no recommendation of the GST council which is placed on record which suggests extension of the timelines for issuance of orders. Further, the HC also held that since the issue of extension of timelines was never placed before GST council, there was no reason to consider the existence of *force majeure* in the present case.

The HC also noted that for the state of Assam has not issued '*pari-materia*' notifications for the period on or after 01.04.2024 for the FY 2018-19 and for the period on or after 01.07.2024 for the FY 2019-20. Hence, even on those grounds, the orders issued for these two FYs by state officers for the state of Assam are not valid.

High Court set aside the orders challenged in the present writ petition (for FY 2018-19 and FY 2019-20) for the above-mentioned reasons.

SBGCO comments:

The Hon'ble HC of Guwahati has set aside the orders based on a very important principal of 'delegated legislation.' Any powers granted vide delegated legislation (in this case, Section 168A of the CGST Act) can be exercised only when all the conditions provided therein have been fulfilled. As observed in this decision, the powers were exercised without fulfilment of the said conditions and as a result, the subsequent actions taken based on such invalid exercise of powers have also been struck down by the HC.

Without a doubt, this decision shall be challenged before the Hon'ble SC by the Centre and the State Government and till then, it shall remain a mystery as to how the future unfolds for all the orders issued under the extended timelines.



C. GST Compliance chart for October 2024

S N	Due Date	Form	Period	Periodicity	Special Remarks
1.	10.10.2024	GSTR - 7	Sept 2024	Monthly	To be filed by those who are required to deduct TDS under GST
2.	10.10.2024	GSTR - 8	Sept 2024	Monthly	To be filed by those who are required to collect TCS under GST
3.	11.10.2024	GSTR - 1	Sept 2024	Monthly	Taxpayers filing GSTR - 1 monthly
4.	13.10.2024	GSTR - 5	Sept 2024	Monthly	To be filed by a non-resident foreign taxpayer registered in GST
5.	13.10.2024	GSTR - 6	Sept 2024	Monthly	To be filed by an ISD
6.	13.10.2024	GSTR - 1	July 2024 to Sept 2024	Quarterly	To be filed by those under QRMP Scheme
7.	18.10.2024	CMP - 08	July 2024 to Sept 2024	Quarterly	To be filed by Composition Dealer (Payment of Self-assessed tax)
8.	20.10.2024	GSTR - 3B	Sept 2024	Monthly	To be filed by Taxpayer filing monthly GSTR 3B
9.	20.10.2024	GSTR - 5A	Sept 2024	Monthly	To be filed by non-resident Online Information and Database Access or Retrieval (OIDAR) services provider
10.	22.10.2024	GSTR - 3B	July 2024 to Sept 2024	Quarterly	To be filed by those under QRMP Scheme (#)
11.	24.10.2024	GSTR - 3B	July 2024 to Sept 2024	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:

Sunil Gabhawalla @ sunil@sbgco.in

Yash Parmar @ yash@sbgco.in

Parth Shah @ parth@sbgco.in

Darshan Ranavat @ darshan@sbgco.in

Aman Haria @ 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

Want to stay connected, join our Whatsapp group by clicking on the link -

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