



SBGCo Connect - August 2023

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Greetings to all our readers!

August marks the onset of various festivities across the nation and more prominently, India completed 76 years of Independence. On this auspicious occasion, we would like to take this opportunity through our newsletter, to wish our fellow countrymen, Happy Independence Day. Jai Hind!

July 2023 was a good month for GST revenue collection. For the 6th time since the inception of GST, gross collections crossed Rs. 1.6 lakh crores. The collections for July 2023 are 11% higher than the GST revenues in the same month last year indicating the forward movement of the economy.

The E-invoice portal and E-way bill portal had planned to roll out 2-Factor Authentication for every login attempt on 01.08.2023 for taxpayers with turnover above Rs. 100 Crores. However, on account of requests from various stakeholders, the 2-Factor Authentication shall now be rolled out from 20.08.2023. The E-invoice portal and E-way bill portal have clarified that no further extension shall be granted in this regard.

W.e.f. 01.08.2023, the Government has now brought the E-invoice threshold limit to Rs. 5 Crores. Taxpayers must ensure that most of the invoices received by them bear QR code and IRN and in case such details are not captured in the invoice, an undertaking/ declaration is taken from the supplier in this regard to ensure the claim of ITC is not questioned in future by the tax officers.

As we move towards the second half of the Calendar year, it is time to set one eye on GST year-end compliance as well. Taxpayers must ensure that Revenue and ITC details are duly reconciled, ITC-mismatch details are duly communicated with suppliers for their action, communications received from customers are acted upon and so on. Form GSTR 9 (Annual Return) and Form GSTR 9C (Reconciliation Statement) are same as per previous financial year and hence, taxpayers must initiate preparation of workings to ensure timely filing.

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 August 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. Further extension of time limit for furnishing various periodic returns for taxpayers of the State of Manipur for the month of April, May & June 2023.

- On account of the ongoing unrest in the state of Manipur, CBIC has further extended the due date of the following returns tabulated below for all taxpayers having GST registration in the state of Manipur for the month of April, May and June 2023.

Particulars	Period	Previous Due Date	New Due Date	Notification No.
Form GSTR 1	April-23	30.06.2023	31.07.2023	18/2023- Central Tax
	May-23	30.06.2023		
	June-2023	11.07.2023 (M) 13.07.2023 (Q)		
Monthly Form GSTR 3B	April-23	30.06.2023	31.07.2023	19/2023- Central Tax
	May-23	30.06.2023		
	June-2023	20.07.2023		
Quarterly Form GSTR 3B	June 2023	24.07.2023	31.07.2023	20/2023- Central Tax
Form GSTR 7	April-23	30.06.2023	31.07.2023	21/2023- Central Tax
	May-23	10.06.2023		
	June-2023	10.07.2023		

II. Further extension of the selective GST amnesty scheme.

- The CBIC has decided to extend the benefit of amnesty announced on 31.03.2023 for streamlining pending/ delayed compliances which was covered in detail in our April 2023 newsletter. The same can be accessed by clicking [here](#).
- The Government has further decided to extend the window for completion of all such pending compliances from 30.06.2023 to 31.08.2023 i.e., the original time frame assigned for the below-tabulated pending compliances was 01.04.2023 to 30.06.2023, which has now been extended upto 31.08.2023
- The Table below summarizes the gist of the recent notifications issued on 17.07.2023.

Particulars	Notification No
Waiver / Reduction in late fees for filing of GSTR 4	22/2023- Central Tax
Filing application for revocation of cancellation of GST registration	23/2023- Central Tax
Filing application for withdrawal of best judgment assessment order	24/2023- Central Tax



Particulars	Notification No
Capping maximum late fees for delayed filing of pending GSTR 9 upto FY 2021-22	25/2023- Central Tax
Capping maximum late fees for delayed filing of pending GSTR 10	26/2023- Central Tax

SBGCO Comments

Looking at the response received for streamlining past compliances by the taxpayers, the Government has decided to extend the relief granted by 2 more months i.e., up to 31.08.2023. Taxpayers must take full benefit of these amnesty schemes to regularize past pending compliances and ensure that past compliances are complied with minimum costs.

III. Restriction for certain class of goods or services which cannot be exported on payment of integrated tax and claim refund of the same.

- The CBIC has notified certain categories of goods (specified in Table below) that shall not be eligible for refund of integrated tax paid at the time of export with payment of tax:

S.No	HSN	Description of Goods
1.	2106 90 20	Pan-masala
2.	2401	Unmanufactured tobacco (without lime tube) - bearing a brand name
3.	2401	Unmanufactured tobacco (with lime tube) - bearing a brand name
4.	2401 30 00	Tobacco refuse, bearing a brand name
5.	2403 11 10	'Hookah' or 'gudaku' tobacco bearing a brand name
6.	2403 11 10	Tobacco used for smoking 'hookah' or 'chilam' commonly known as 'hookah' tobacco or 'gudaku' not bearing a brand name
7.	2403 11 90	Other water pipe smoking tobacco not bearing a brand name.
8.	2403 19 10	Smoking mixtures for pipes and cigarettes
9.	2403 19 90	Other smoking tobacco bearing a brand name
10.	2403 19 90	Other smoking tobacco not bearing a brand name
11.	2403 91 00	"Homogenised" or "reconstituted" tobacco, bearing a brand name
12.	2403 99 10	Chewing tobacco (without lime tube)
13.	2403 99 10	Chewing tobacco (with lime tube)
14.	2403 99 10	Filter khaini
15.	2403 99 20	Preparations containing chewing tobacco
16.	2403 99 30	Jarda scented tobacco
17.	2403 99 40	Snuff
18.	2403 99 50	Preparations containing snuff
19.	2403 99 60	Tobacco extracts and essence bearing a brand name
20.	2403 99 60	Tobacco extracts and essence not bearing a brand Name
21.	2403 99 70	Cut tobacco
22.	2403 99 90	Pan masala containing tobacco 'Gutkha'
23.	2403 99 90	All goods, other than pan masala containing tobacco 'gutkha', bearing a brand name
24.	2403 99 90	All goods, other than pan masala containing tobacco 'gutkha', not bearing a brand name



S.No	HSN	Description of Goods
25.	3301 24 00, 3301 25 10, 3301 25 20, 3301 25 30, 3301 25 40, 3301 25 90	Following essential oils other than those of citrus fruit namely: - (a) Of peppermint (<i>Mentha piperita</i>); (b) Of other mints : Spearmint oil (<i>ex-mentha spicata</i>), Water mint-oil (<i>ex-mentha aquatic</i>), Horsemint oil (<i>ex-mentha sylvestries</i>), Bergament oil (<i>ex-mentha citrate</i>), <i>Mentha arvensis</i>

Notification No. 01/2023 - Integrated Tax dated 31.07.2023

SBGCO Comments

As a result of the above change, made effective from 01.10.2023, such goods will be required to be exported without payment of IGST only and compulsorily required to take the route of refund of unutilized ITC in relation to such exports.

IV. Notifying date for implementation of provisions of Finance Act, 2021 and Finance Act, 2023.

Provision	Effective date	Link of the summary
Section 123 of the Finance Act, 2021	01.10.2023	Click Here to refer Para 4 on Page 3 of the newsletter for February 2021 summarizing the said changes
Sections 137 to 148 and 155 to 162 of the Finance Act, 2023	01.10.2023	Key changes from Finance Act, 2023 are summarized in our newsletter can be referred by clicking here .
Section 149 to 154 of the Finance Act, 2023 (provisions pertaining to setting up of GST Tribunals)	01.08.2023	Click Here to refer Para II on Page 5 of the newsletter for April 2023 summarizing the said changes

Notification No. 27/2023 - Central Tax & 28/2023 - Central Tax, both dated 31.07.2023

SBGCO Comments:

Key Changes effective from 01.10.2023 are summarized hereunder:

- Specific class of commodities not permitted to export with payment of taxes on account of changes to Section 16 of the IGST Act, 2017
- Section 17(5) amended to block input tax credit in respect of goods or services which are used or intended to be used for activities relating to his obligations under CSR
- Supply of warehoused goods before clearance for home consumption will now be treated at par with exempt income thus requiring reversal of ITC under Rule 42/43 of the CGST Rule, 2017.
- Section 23 of the CGST Act, 2017 is amended retrospectively w.e.f. 01.07.2017 to ensure exemption from registration for entities exclusively supplying exempted goods or services or an agriculturist



- e. An outer time limit of 3 years from actual due date is introduced for filing returns namely, GSTR1, GSTR3B & GSTR9.
- f. In case of transportation services for domestic and foreign customers, the place of supply will be determined based on the location of the recipient of service.

V. Procedure for filing of manual Appeal against an order issued in regards to the claim of TRAN-1 / TRAN-2 credit during the special window enabled by GSTIN

- The manual appeal against an order passed by the proper officer in regards to the claim of TRAN-1/ TRAN-2 credit shall be presented in duplicate before the Appellate Authority within the time limit prescribed under Section 107 of the CGST Act, 2017. The Format of Appeal has been prescribed as Annexure-1 to the said notification
- No separate/additional filing of an appeal is required if the appeal has already been filed before the issuance of this notification.
- No pre-deposit is required to file an appeal in this special case
- The manual appeal shall be accompanied by a self-certified copy of the order and such relevant appeal book and documents duly signed as provisions of Rule 26 of the CGST Rules, 2017
- Manual acknowledgment in Form GST APL-02 shall be issued by the Appellate Authority
- Appellate Authority shall issue Order and summary of the order as per the format prescribed by Annexure-2 to this notification.

Notification No. 29/2023 - Central Tax dated 31.07.2023

SBGCO Comments

The notification is a welcome move from the Government to clarify the process of filing of manual appeal including issuance of order by Appellate Authority for transition credit-related matters arising on account of the special offline window set up for claim of transition credits for taxpayers.

VI. Form GSTR-9 (Annual Return) threshold continued.

- The Government has decided to continue the basic threshold limit of Rs. 2 crores for FY 2022-23 for filing of Form GSTR-9 i.e., normal taxpayers with aggregate T/o below Rs. 2 crores are exempted from filing of Form GSTR-9 (Annual Return)

Notification No. 32/2023 - Central Tax dated 31.07.2023

VII. Registration process-related changes for the state of Puducherry

- A New Rule 8(4A) was introduced in December 2022 wherein for certain cases of application of fresh GST Registration, based on data analysis and risk parameters, the applicant shall be required to undergo biometric-based Aadhaar authentication, clicking of photographs (of the applicant or specified persons listed in the case where the applicant is not an individual) and verification of documents uploaded in registration form along with Original Copy at the notified facilitation centres. The



process of registration would be deemed to be completed only after such process is duly completed.

- The above provisions were applicable only to the state of Gujarat till now. Moving forward, the above registration process shall be applicable to the state of Puducherry as well.

Notification No. 31/2023 - Central Tax dated 31.07.2023

SBGCO Comments

The intention of the Government to ensure GST registration is granted after thorough authentication is evident from the above provisions wherein GST registration to a specific set of high-risk assesseees shall be granted only after detailed verification.

VIII. Consent-based sharing of information with “Account Aggregator”

- W.e.f. 01.10.2023, the common GST portal will be permitted to share information related to a particular registered taxpayer with an “Account Aggregator” after obtaining due consent from such taxpayer in accordance with Section 158A of the CGST Act, 2017.
- Account Aggregators for the purpose of this notification means, “a non-financial banking company which undertakes the business of an Account Aggregator in accordance with the policy directions issued by the Reserve Bank of India under section 45JA of the Reserve Bank of India Act, 1934 and defined as such in the Non-Banking Financial Company - Account Aggregator (Reserve Bank) Directions, 2016.
- Section 158A permits common GST portal to share information in relation to details furnished under registration, monthly/ quarterly returns, Annual returns, etc.

Notification No. 33/2023 - Central Tax dated 31.07.2023

IX. Special relaxation for small suppliers supplying goods through e-commerce operators

If the aggregate turnover of a particular supplier for the preceding financial year and current financial year does not cross the basic threshold limit for registration and such supplier is making supplies of goods through e-commerce operators (ECO), then the present notification grants exemption to such suppliers from taking registration subject to certain conditions listed hereunder:

- a. No inter-state supplies of goods
- b. No supplies through ECO in more than one state or UT
- c. Must have a valid PAN issued under Income Tax Act, 1961
- d. Declare PAN, place of business in state/UT on common GST portal before making supplies through ECO
- e. Successful assignment of “enrolment number” to such person by common GST portal (not more than 1 enrolment number per state/UT)
- f. Such ‘Enrolment number’ is mandatory before making any supplies through ECO
- g. Such ‘Enrolment number’ shall cease to operate, once normal GST registration number allotted.



The above notification shall be effective from 01.10.2023.

Notification No. 34/2023 – Central Tax dated 31.07.2023

SBGCO Comments

The above changes will be helpful to small businesses that mostly sell via online model through ECO. These small businesses are now exempted from obtaining compulsory GST registration in cases where their turnover does not cross basic threshold limit. ECO and GST portal will require system changes to incorporate these changes which will be effective in 2 months.

X. Declarations by GTA

- GTA were previously required to submit an online declaration in Annexure V every year before 15th March of the preceding financial year if they intended to opt for payment of taxes under forward charge for the upcoming financial year.
- The said process is now completely revamped by the Government as below:
 - Online declaration in Annexure V is now required to be filed between 1st January and 31st March of the preceding financial year.
 - Such declaration in Annexure V will be valid for future years (i.e., not requirement to file every year) as well unless the GTA decides to file Annexure VI on the common GST portal intending to revert to reverse charge mechanism.
 - Time limit to file Annexure VI is the same as Annexure V i.e., between 1st January and 31st March of the preceding financial year.
 - Format for Annexure VI also notified by the CBIC in this regard.
 - The declaration to be printed on invoices issued by GTA paying tax under forward charge is also updated as under:

“I/we have taken registration under the CGST Act, 2017 and have exercised the option to pay tax on services of GTA in relation to transport of goods supplied by us **from the Financial Year _____ under forward charge and have not reverted to reverse charge mechanism**”

Notification No. 06/2023 – Central Tax (Rate) & Notification No. 08/2023 – Central Tax (Rate), both dated 26.07.2023 [or Notification No. 06/2023 – Integrated Tax (Rate) & Notification No. 08/2023 – Integrated Tax (Rate), both dated 26.07.2023]

SBGCO Comments

The said provisions were recently introduced in August of 2022. The entire process is now revamped in less than a year. The Government should consider taking suggestion from trade and business before bringing such changes so that frequent changes can be avoided. On the other hand, the GTA sector shall be pleased with resumed compliance burden moving forward.



XI. Support services to agricultural produce truncated.

- The exemption for “services by way of fumigation in a warehouse of agricultural produce” has been discontinued w.e.f. 27.07.2023 by omitting the same from Entry 24 of the Notification 11/2017 - Central Tax (Rate) dated 28.06.2017.

Notification No. 06/2023 - Central Tax (Rate) dated 26.07.2023 [or Notification No. 06/2023 - Integrated Tax (Rate) dated 26.07.2023]

XII. Satellite Launch services.

- The exemption for “Satellite Launch services” was previously available only for 3 entities viz., Indian Space Research Organisation, Antrix Corporation Limited and New Space India Limited.
- W.e.f. 27.07.2023, the service “Satellite Launch services” is entirely exempted irrespective of who the service provider is.

Notification No. 07/2023 - Central Tax (Rate) dated 26.07.2023 [or Notification No. 07/2023 - Integrated Tax (Rate) dated 26.07.2023]

XIII. Changes in GST rates for goods.

- The Table below summarizes the changes in GST rates for various products as decided by the GST council in the 50th GST Council Meeting:

Product	HSN Code	New Rate	Old Rate
Un-fried or un-cooked snack pellets, by whatever name called, manufactured through process of extrusion*	1905	5%	18%
Fish soluble paste*	2309	5%	NA
Linz-Donawitz (LD) Slag	2619	5%	18%
Imitation zari thread or yarn known by any name in trade parlance*	56050020	5%	12%

Notification No. 09/2023 - Central Tax (Rate) dated 26.07.2023 [or Notification No. 09/2023 - Integrated Tax (Rate) dated 26.07.2023]

** As per Circular No. 200/12/2023-GST dated 01.08.2023, the past period GST rate regularized on "as is" basis on account of genuine confusion prevailing in the respective product classification*

XIV. Meaning of “Foreign Trade Policy” & “Handbook of Procedures” clarified for Notification No. 26/2018 - Central Tax (Rate) & 27/2018 - Integrated Tax (Rate) dated 31.12.2018

- The CBIC had issued notification amending Notification No. 26/2018 - Central Tax (Rate) & 27/2018 - Integrated Tax (Rate) dated 31.12.2018 by clarifying the meaning of “Foreign Trade Policy” and “Handbook of Procedures”

Notification No. 10/2023 - Central Tax (Rate) dated 26.07.2023 [or Notification No. 10/2023 - Integrated Tax (Rate) dated 26.07.2023]



XV. Kerala State mandates generation and quoting of a Unique Reference Number (RFN) on all communications issued by State tax officers

- The Kerala State Government has decided to mandate generation and quoting a unique Reference Number (RFN) on all communications including email made to taxpayers and other concerned individuals by the state tax officers. The said RFN will be generated using GST portal functionality made available by the GSTN.
- The notification also clarifies that generation of RFN shall not be required for notices, orders, and communications that are legally issued by state tax officers on the GSTN portal.
- Only in exceptional situations, RFN generation shall be exempted such as technical difficulties in generating the electronic RFN or communication regarding investigation/enquiry/ verification, etc., is required to be issued at short notice or in urgent situations, and the authorized officer is outside the office in the discharge of his official duties
- In the above cases, the unique RFN should be electronically generated within 15 days to regularize the previous communication issued without generation of RFN.
- In case any communication is issued without generation and quoting of RFN, it will be deemed that such communication was never issued (except for specific scenarios specified above).

Circular No. 14/2023 - dated 22.07.2023

SBGCO Comments:

This is a welcome move from the Kerala State Government and this should motivate other states as well to adopt the process of assigning unique reference numbers for all offline communications to ensure authenticity and establish accountability for all types of communications made by state tax officers except the once made on official GST portal. For Central Tax officers, the process of generating DIN for all communication is already in place.

XVI. GSTN Portal Advisory: Geocoding Functionality

- The GST portal has introduced a new feature that converts an address or description of a location into geographic coordinates. This has been introduced to ensure the accuracy of address details in GSTN records and streamline the address location and verification process.
- Taxpayers can update the geographic coordinates of their address on the GST portal. This feature is a one-time activity, and once submitted, revision in the address is not allowed except when an amendment of registration through core-fields amendment is applied by the taxpayer.
- The detailed advisory can be accessed by clicking [here](#).

GSTN portal advisory dated 07.07.2023.



XVII. Circulars issued during July 2023.

A slew of circulars was issued on 17th July 2023 clarifying certain decisions announced in the 50th GST Council meeting held on 11th July 2023. Our Newsflash issued on 18th July 2023 covered the summary of the said circulars. Our readers can access them by clicking [here](#).

XVIII. Latest Circulars

A. Services supplied by director of a company in his personal capacity:

- The circular has clarified that services supplied by a director of a company or body corporate in his private or personal capacity to such company or body corporate such as services supplied by way of renting of immovable property to the company or body corporate are not taxable under RCM. RCM will only be applicable on services provided in the capacity of director of that company or body corporate.

B. Supply of food or beverages in cinema hall

- The circular has clarified that supply of food or beverages in a cinema hall is taxable as 'restaurant service' provided that the food or beverages are supplied by way of or as part of a service and supplied independent of the cinema exhibition service.
- The Circular has further clarified that in the case where the sale of cinema ticket and supply of food and beverages are clubbed together and conditions of composite supply are satisfied, then entire supply will attract GST at rate applicable to service of exhibition of cinema (being the principal supply).

Circular No. 201/13/2023-GST dated 01.08.2023

C. Clarifications with reference to GST levy for various goods

- Un-fried or un-cooked snack pellets, by whatever name called, manufactured through process of extrusion

Clarification:

- Extruded snack pellets in ready- to-eat form - 18%
- Un-fried or un-cooked snack pellets, manufactured through process of extrusion (HSN 1905) - 5%
- Past period issues relating to GST rate - regularized on 'as is' basis upto 27.07.2023

- Fish Soluble Paste

Clarification:

- GST Rate on Fish Soluble Paste (HSN 2309) - 5% w.e.f. 27.07.2023.
- Past period issues relating to GST rate - regularized on 'as is' basis upto 27.07.2023

- Desiccated coconut (for the period 01.07.2017 to 27.07.2017)

Clarification:

- Past period GST rate-related issues for Desiccated coconut (HSN 0801) for the period 01.07.2017 to 27.07.2017 regularized on 'as is' basis.

- Biomass briquettes (for the period 01.07.2017 to 12.10.2017)

Clarification:

- Past period GST rate-related issues for Biomass briquettes (under any HSN) for the period 01.07.2017 to 12.10.2017 regularized on 'as is' basis



- v. Supply of raw cotton by agriculturist to cooperatives
Clarification:
- Supply of raw cotton, including kala cotton from agriculturists to cooperatives is a taxable supply which attracts 5% GST on RCM basis
- Past period issues for supply of raw cotton from agriculturists to cooperatives till date is regularized on 'as is' basis.
- vi. Imitation Zari thread or yarn
Clarification:
- GST Rate on imitation Zari thread or yarn (HSN 5605) – 5% w.e.f. 27.07.2023.
- Past period issues relating to GST rate – regularized on 'as is' basis upto 27.07.2023
- vii. Plates, cups made from areca leaves (for the period 01.07.2017 to 01.10.2019)
Clarification:
- Past period GST rate-related issues for Plates, cups made from areca leaves for the period 01.07.2017 to 01.10.2019 regularized on 'as is' basis.
- viii. Goods falling under HSN 9021
Clarification:
- GST rate on trauma, spine and arthroplasty implants falling under HSN heading 9021 – 5%
- Past period GST rate-related issues for such goods falling under HSN 9021 are regularized on 'as is' basis

On account of regularizing of issues on 'as is' basis, the circular has clarified that if any taxpayer has paid GST at a higher rate than the one clarified above, no refund shall be granted.

SBGCO Comments

Regularizing on 'as is' basis may cut down on the scope of litigation for all such issues, however, it may also send a wrong message that taxpayers can take aggressive positions and discharge tax at lower rate because the Government might settle confusions by regularizing on 'as is' basis.



B. Recent Decision from the Judiciary:

1. Thirumalakonda Plywoods vs. Asst Commissioner, State Tax [2023-VIL-472-AP]

Background facts:

The petitioner filed Form GSTR-3B of March 2020 on 27.11.2020 (i.e., after the time limit prescribed in Section 16(4) of the CGST Act, 2017 i.e., due date of filing of GSTR 3B for September 2020). The state tax officer issued a notice, followed by a demand order disallowing ITC availed by the petitioner in Form GSTR 3B of March 2020 since the same was filed belatedly. The present writ petitioner was filed by the petitioner challenging the constitutional validity of time limit prescribed in Section 16(4) of the CGST Act, 2017

Key Issue Raised:

- (1) Whether the time limit for claiming ITC in Section 16(4) of the CGST Act, 2017 violated Article 14, 19(1)(g) and 300A of the Constitution of India and thus, liable to be struck down?
- (2) Whether Section 16(2) of the CGST Act, 2017 would prevail over 16(4) of the CGST Act, 2017?
- (3) Whether the acceptance of Form GSTR-3B returns of March 2020 filed on 27.11.2020 by the petitioner with a late fee of Rs.10,000/- will exonerate the delay in claiming the ITC beyond the period specified under Section 16(4) of the CGST Act, 2017?

Gist of the Decision:

- (1) The Hon'ble High Court has held that ITC is a concession/ benefit and not a statutory or constitutional right. Hence, the legislature can impose conditions including prescribing time limit for claiming of such ITC. The HC further held that imposition of any condition for availing ITC does not constitute violation of constitutional right.
- (2) The HC further held that Section 16(2) of the CGST Act, 2017 provides eligibility conditions for claiming ITC while Section 16(4) of the CGST Act, 2017 imposes time limitations within which such eligible ITC can be claimed. Thus, these Sections are independent of each other and are to be applied collectively. The HC declined to accept the proposition that Section 16(2) overrides or controls Section 16(4) of the CGST Act, 2017.
- (3) The HC noted that payment of late fees does not regularize the conditions placed by Section 16(4) of the CGST Act, 2017. Such late fees are merely for admitting the returns and nothing more.

SBGCO Comments:

This judgment lays down that provision of Section 16(4) of the CGST Act, 2017 imposing time limit for claim of credit are valid and taxpayers must ensure that any claim of credit for a particular financial year must be claimed within the time limit prescribed. The above case will be detrimental for assesseees who have claimed ITC in any Form GSTR 3B filed belatedly after the prescribed time limit as the above judgment also clarifies that payment of late fees does not vindicate the claim of ITC beyond the prescribed time limit.



2. HT Media Limited vs. Union of India & Ors [2023-VIL-458-DEL]

Background Facts:

The petitioner was granted a personal hearing on 19.08.2022 whereas the time limit for filing of reply to SCN issued on 01.08.2022 expired on 01.09.2022. The reply was filed by the petitioner on 01.09.2022 with a special mention to grant an opportunity of a personal hearing. The SCN issued also did not specify the grounds on which demand was proposed to be raised. Order was passed by adjudicating authority without giving any subsequent opportunity of hearing.

Issue Raised:

Can an Order be passed based on SCN that does not specify grounds for proposing demand and calling the petitioner for a personal hearing before the statutory time limit for filing of reply has expired?

Gist of the Decision:

The Hon'ble HC held that opportunity for personal hearing cannot be granted before the expiry of the time afforded to the petitioner for responding to the SCN. This is because opportunity to be heard is not a mere formality. The same should be afforded after the time limit of replying to the SCN so that the petitioner can explain his position/views on record. The Hon'ble HC also held that the SCN was also liable to be set aside since there is no clear reason for raising of the proposed demand.

3. Jupiter Exports vs. Commissioner of GST [2023-TIOL-877-HC-DEL-GST]

Background Facts:

The officer passed an order raising a total demand of Rs.6,67,74,062/- without granting of personal hearing on the grounds that the visit of the representatives of the petitioners in the office of the Officer and the telephonic conversation is equivalent to a personal hearing.

Issue Raised:

Can visits of the representatives of the petitioners in the office of the Officer and the telephonic conversation be construed as personal hearing?

Gist of the Decision:

The Hon'ble HC has noted that the purpose of personal hearing is to enable the noticee to address its arguments after the reply is filed. However, the telephonic conversation which the Officer had with the petitioner, even before the final reply was filed, cannot be construed as personal hearings. The Hon'ble HC held that such a process adopted by officer to quickly conclude adjudication process is in violation of statutory principles of the GST law and principles of natural justice.



SBGCO Comments 2 & 3:

The adjudicating officers find new ways to not follow the set process of adjudication and in turn lead to more litigation wherein the High Courts need to step in and reset the course of adjudication. The Officers need to be mindful of the process of adjudication so that principles of natural justice are always adhered to.

4. Targos Chemicals India Pvt Ltd vs Union of India [2023-TIOL-873-HC-AHM-GST]

Issue Raised:

Can the petitioner file a refund claim of payment of duty (under an error) of IGST at the rate of 18% instead of the concessional rate of 0.1% in terms of Notification No.41/2017-Integrated Tax (Rate)?

Gist of the Decision

The Hon'ble HC set aside the refund rejection order passed by the adjudicating order and held that the petitioner is eligible for refund. The HC observed that all the conditions laid down in Notification No.41/2017-Integrated Tax (Rate) were satisfied. Relying on the Apex Court decision in the case of Bonanzo Engineering & Chemical Pvt. Ltd [2012-TIOL-25-SC-CX], the HC held that merely because by mistake, the assessee paid duties on the goods which are exempted from payment does not mean that goods become liable for the duty under the Act. The HC also relied on another judgment of the Apex Court [Share Medical Care v. UoI - 2007-TIOL-26-SC-CUS] where, it has been held the benefit of a notification not taken at the initial stage does not debar/ prohibit the assessee from claiming the benefit of the same subsequently.

SBGCO Comments:

This is an important decision by the Hon'ble High Court wherein the benefit of lower rate was restored on the petitioner even though tax was paid at a higher rate by mistake. The High Court notably took care of the fact that conditions prescribed in the notifications have been satisfactorily fulfilled before granting the benefit. This decision also upholds the principles that substantial benefit cannot be denied on the ground of technicalities or procedural lapses such as paying incorrect tax.



C. Recent Decisions from Advance Authority

1. M/s. Palal Realty [Order No. KER/01/2023 (Kerala) = 2023-TIOL-104-AAR-GST]

Background facts:

The Applicant is a partnership firm registered in Kerala and engaged in business as builders and developers. They are engaged in development of a Villa Project.

Key Question raised:

Whether the amount charged by the applicant from villa buyers for some structural changes, to add some additional area or undertake interior works etc carried out before the completion of the construction is also part of gross amount charged for construction and sale of villa and accordingly the effective tax rate of 1%/5% will also be applicable on such amount charged without input tax credit??

Gist of the Ruling:

The amount charged by the Applicant from the villa buyers for some structural changes, to add some additional area or undertake interior works etc. carried out before completion of the construction would be treated as being part of overall construction services and naturally bundled when supplied to the villa buyers. Hence, such value will be included in the consideration charged for the construction service and shall form part of the total amount charged for the supply.

SBGCO comments:

The above decision correctly took note of the provisions relating to 'value of supply' and hence appropriately treated the additional charges for structural changes/ interiors, etc. as part of the value of the main supply construction services of the villa.

2. Manappuram Finance Ltd [Order No. KER/13/2023 (Kerala) = 2023-TIOL-107-AAR-GST]

Background facts:

The Applicant is a Non-Banking Financial Company registered under GST. The Applicant owned 0.5 Ares (58 Cents) of land in Valapad village in Thrissur District which is a wetland as per the records of the village authorities. They wanted to change the description of the land from wetland to dry land in the village office records for the purpose of construction of office complex. For this purpose, they remitted the prescribed amount of fee to the government under the provisions of the Kerala Conservation of Paddy Land and Wetland Act 2018.

Questions raised:

Whether reverse charge liability is Valspar attracted on the payment made to the Government of Kerala under Section 27A of The Kerala Conservation of Paddy Land and Wetland Act, 2018 for change of description of land from wetland to ordinary land in Government of Kerala village office records and permission for construction of office complex for the purpose of business the applicant?



Gist of the Ruling:

The AAR held that permitting conversion of unnotified land included as paddy land or wetland in the basic tax register maintained in Village offices for residential, commercial, or other use subject to conditions and levy of fees cannot be considered as an activity in relation to any of the functions entrusted to Panchayat under Article 243 G of the Constitution. The AAR has held that fees charged represent conferring private benefit at the cost of the public good. Hence, tax under RCM shall be payable by the Applicant for fees paid to the Government of Kerala under the Kerala Conservation of Paddy Land and Wetland Act, 2018 for change in land use.

SBGCO comments:

The AAR is a classic example of the tussle between the Department and the taxpayer. As per Department, services provided by SG/ CG/ UT would not be covered by an exemption granted to activities performed under Article 243W and 243G of the Constitution of India and on the other hand, the taxpayer would always believe that payment of fees would be covered in one or the other sovereign functions set out in the Constitution of India. The taxpayer must always tread with caution when it comes to such payments and ensure that the position regarding payment of taxes under RCM or not should be thoroughly reviewed as future implications of demand of tax under RCM lead to payment of tax with interest without the corresponding benefit of ITC.



D. GST Compliance chart for August 2023

SN	Due Date	Form	Period	Periodicity	Special Remarks
1.	10.08.2023	GSTR - 7	July 2023	Monthly	To be filed by those who are required to deduct TDS under GST
2.	10.08.2023	GSTR - 8	July 2023	Monthly	To be filed by those who are required to collect TCS under GST
3.	11.08.2023	GSTR - 1	July 2023	Monthly	Taxpayers filing GSTR - 1 monthly
4.	13.08.2023	GSTR - 5	July 2023	Monthly	To be filed by a non-resident foreign taxpayer registered in GST
5.	13.08.2023	GSTR - 6	July 2023	Monthly	To be filed by an ISD
6.	13.08.2023	IFF	July 2023	Monthly	To be filed by those under QRMP Scheme (optional)
7.	20.08.2023	GSTR - 3B	July 2023	Monthly	To be filed by Taxpayer filing monthly GSTR 3B
8.	20.08.2023	GSTR - 5A	July 2023	Monthly	To be filed by non-resident Online Information and Database Access or Retrieval (OIDAR) services provider
9.	25.08.2023	PMT - 06	July 2023	Monthly	Challan to be filed for payment by those under QRMP Scheme



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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