

# **SBGCo Connect**

## **May 2023**

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Greetings to all our readers! We wish that we find you in good health & spirits.

The temperatures in the month of April 2023 may not have been the highest ones for India, but GST collections have attained a new record high. During April 2023, the GST collections were at an all-time high of Rs. 1.87 lakh crore. The growth in revenue can be attributed to inflation, post-pandemic improvement in economy, increase in compliance and anti-tax evasion measures namely, e-way bill, e-invoices, data analytics and so on.

Now that FY 2022-23 has ended, it is important to reconcile details of outward and inward details as per accounts with the details furnished in the returns during the previous financial year. Further, with the advent of compulsory matching of ITC before claim in Form GSTR-3B, the taxpayers now have access to unmatched ITC at the end of every month. This data should now be reviewed for follow up with the respective vendors without waiting till October 2023. This process will ensure rectification of any errors occurred while filing returns during the previous year, either at supplier end or recipient end and help avoid unwarranted costs for the businesses in form of ITC lapse or interest dues.

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 May 2023](#)

All the 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. IRN generation time-limit

- GSTN portal has issued an advisory regarding time-limit for generating E-invoices. The GSTN portal has clarified that taxpayers with aggregate annual turnover (AATO) greater than INR 100 Crores would now be required to generate e-invoices for tax-invoices, debit notes, credit notes (including for Export of goods and services) within 7 days of the date of the invoice.
- The said restriction of 7-day window for such taxpayers will be made effective on invoice registration portal w.e.f. 01.05.2023.
- The said advisory can be accessed from clicking [here](#).

#### **SBGCO Comments:**

It is surprising to note that there is no such restriction for generation of E-invoice in any of the GST provisions and neither such power has been delegated to the GSTN portal to determine such changes. Hence, it remains to be seen whether such restriction can withhold the legal scrutiny before the Courts. Until then, it is advised that the taxpayers ensure that the E-invoices are generated within such time frame.

### II. Portal related updates

#### **A. Integration of validation of Bank Accounts with GST system**

- To ensure that the Bank accounts provided by taxpayers are correct, the GSTN portal now shows validation status against the bank accounts provided by the taxpayer in their GST registration.
- The taxpayer can also access the status from the following path: Login → Dashboard → My Profile → Bank Account Status tab.
- Wherever the status is shown as “Failure,” the Taxpayers are requested to take immediate action. Likewise, various other status that would be reflected is as below:

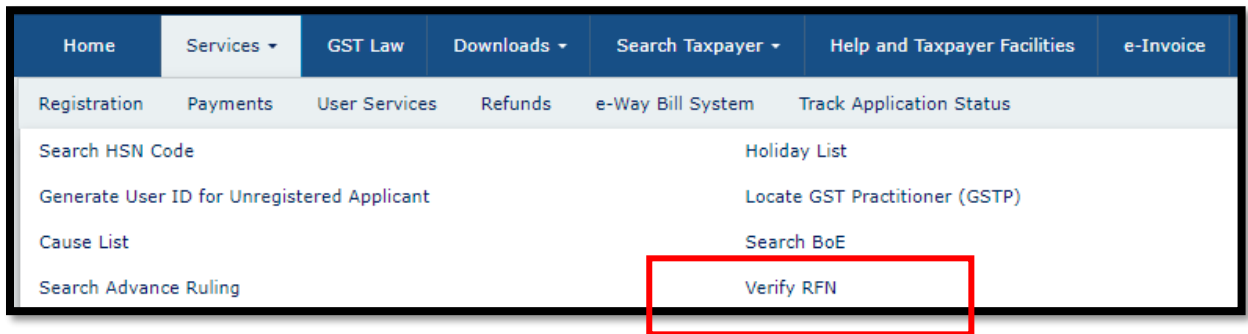
Icon	Description
	Success
	Failure
	Success With Remark
	Pending for Validation

- When the status is “Success with Remarks,” the Tax Payer should provide alternate bank account number so that it can be revalidated.
- The detailed advisory can be accessed from clicking [here](#).



**B. Document Reference Number (RFN) facility**

- Under this new facility, the State Tax office can generate a RFN for the physically generated correspondence sent to the taxpayer, which can be validated by the taxpayer on the GST portal.
- The said facility can be accessed by taxpayers from the following path: Services → User Services → Verify RFN.



- For Central GST officers, DIN facility is already available for offline communication.
- The detailed advisory can be accessed by clicking [here](#).

**SBGCO Comments:**

This introduction of new facility for RFN is a direct outcome of the recommendation suggested by the Supreme Court in the case of Public Interest Ligation filed by Pradeep Goyal [2022-TIOL-66-SC-GST]. The Apex Court has noted that GST Council should issue advisory to the respective States for implementation of the document identification system which will lead to transparency and accountability in the indirect tax administration.



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

### **1. Union of India vs. Cosmo Films Ltd [2023-TIOL-45-SC-CUS]**

#### **Background facts:**

Advance Authorisation (AA) is a scheme wherein exporter is allowed duty free import of inputs, which are physically incorporated in the export product and allowing normal allowance for wastage. After introduction of GST, it was clarified that AA would only be used for BCD and exemption from payment of IGST at the time of imports would not be available.

After much agitation, NN. 79 / 2017 - Customs dated 13.10.2017 was issued to extend benefit of AA to exempt import of goods from levy of IGST. However, this benefit came with a rider, that exporter must physically export the goods and satisfy pre-import condition. 'Pre-import condition' meant that the said imported goods (for which AA is used) must be used in manufacture of export of goods (i.e., one-to-one nexus between inputs imported and exports including such inputs).

Simultaneously, Rule 96(10) of the CGST Rules, 2017 were amended (including retrospective amendments) to provide that refund of tax paid on exports (i.e., EXPWP) would not be permitted if the benefit of AA has been claimed for claiming exemption of IGST at the time of imports as well.

Such condition caused severe hardship to exporters to avail benefit of AA and reduced the utility of AA scheme. The pre-import condition was ultimately withdrawn vide NN 01/2019 - Customs dated 10.01.2019.

The Guj HC in the case of Cosmo Films Ltd Vs. UoI [ ] had set aside the pre-import condition (as prevalent for the period 13.10.2017 to 10.01.2019) laid down in Foreign Trade Policy and Handbook of Procedures 2015-2020.

#### **Issue Raised:**

The decision of the Guj HC was challenged before the Hon'ble SC and it was argued by the Union of India that such pre-import condition and other corresponding amendments are valid.

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

The Hon'ble Apex Court held in the favour of the Department and observed that

- a. Introduction of the 'pre-import condition' may have resulted in hardship to the exporters and change in business practises but that CANNOT be a ground to hold that the insertion of the 'pre-import condition' was arbitrary.
- b. There is NO constitutional compulsion that whilst framing a new law, or policies under a new legislation, concessions granted in earlier regime or given previously should necessarily be continued in the same fashion as they were in the past.
- c. Subsequent withdrawal of 'pre-import condition' CANNOT lead to a conclusion that the conditions were unworkable and unfeasible nature during the period of application.
- d. If the legislation has powers, then legislation can introduce both, Refund and Exemptions, with conditions.



**SBGCO Comments:**

Though the judgment has restricted scope of applicability period (i.e., 13.10.2017 to 10.01.2019), it lays down the importance of the power granted in the legislation. Inconvenience to certain trade and subsequent changes do not impact the previous period, if all conditions and restrictions placed by the Government have been done within the powers granted under the new/amended legislation. Exporters need to ensure that the relevant provisions of the law (Customs and GST) are correctly followed whilst importing and exporting goods.

**2. Dharmendra M Jani vs. Union of India [2023-TIOL-452-HC-MUM-GST]**

**Background Facts:**

The case of Dharmendra M Jani vs. Union of India had received a split verdict from the High Court of Bombay on 16<sup>th</sup> June 2021 (2021-TIOL-1326-HC-MUM-GST) from a division bench and thus referred to Hon'ble Chief Justice for a decision on whether Section 13(8)(b) of the IGST Act 2017 is ultra vires the Constitution and the provisions of the IGST Act. The analysis of the said split verdict of June 2021 can be accessed from our previous newsletter by clicking [here](#).

**Issue Raised before Hon'ble Chief Justice:**

Whether provisions of Section 13(8)(b) of the IGST Act, 2017 which deal with intermediary services is constitutionally valid?

**Gist of the Decision:**

The Hon'ble HC has held that the transaction of an intermediary fall under the IGST Act and CGST / SGST Act do not apply to the same. The HC has further held that the consumption of such service is outside India. However, Section 13(8)(b) of the IGST Act dealing with intermediary (defining the place of supply as 'location of supplier' for intermediary services) is held as valid as bringing in a legal fiction.

**SBGCO Comments:**

In our opinion, with all due respect to the HC, the said decision does not provide final clarity to the said issue.

On a detailed reading of the judgement, it is seen that the HC has emphasised on the fact that GST is a destination-based tax in India. The HC has also acknowledged the fact that the services of the intermediary have been consumed outside India in the present case. The language of the judgement refers to intermediary as 'exporter' and the services provided by him as 'export services' on multiples instances. However, when concluding the decision, the HC does not definitely answer in the favour of the intermediary treating it as export of services for the purposes of GST law.

Similarly, the HC judgement traces the power of the State and Central Government enshrined in the Constitution of India to collect taxes under the GST provisions. On a cumulative reading of article 246A, 269 and 286 along with Section 7, 8, 9 of the IGST Act, 2017 the HC has concluded that CGST and SGST cannot apply for such transaction where the recipient is outside India as there is no power granted to the State government to collect tax on such a transaction.



At the same time, it upholds the validity of Section 13(8)(b) of the IGST Act citing the reason of harmonious reading of the provisions of the law. If a view is taken based on the said decision that the intermediary transaction by Indian supplier constitutes an export of service and is eligible for the associated benefits, even then the Department could still bring in Section 13(8)(b) of the IGST Act to state that one of the conditions of export of service is not satisfied (because Section 13(8)(b) has been held to be valid) and therefore demand IGST on such transaction.

### **3. Uber India System Pvt Ltd vs. Union of India [2023-TIOL-426-HC-DEL-GST]**

#### **Background Facts:**

Vide NN. 16/2021- CT (R) and Clauses 1(i) and 2(i) of NN. 17/2021 - CT (R), both dated 18.11.2021, passenger transportation service by way of auto-rickshaws mediated by Electronic Commerce Operators (ECOs) have now been made taxable which was earlier exempted when such service was not mediated by ECOs.

#### **Issue Raised:**

Whether NN. 16/2021- CT (R) and Clauses 1(i) and 2(i) of NN. 17/2021 - CT (R), both dated 18.11.2021 are ultra vires on the grounds that when the services are directly availed by recipient, the same are exempt but when availed through ECOs, the same are taxable services.

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

The Hon'ble HC held that there is fair share of distinction when passenger transportation service by way of auto-rickshaws is availed through the ECOs (vs. street-hailed), namely,

- (i) Pick up at door-step
- (ii) multiple payment options (Cash, UPI, Card, Wallet, etc)
- (iii) tracking the ride through 'share your trip status' to assure the safety of the consumer
- (iv) supervisory role by ECOs to monitor the transaction.

Hence, consumer who uses a street hailed auto rickshaw and those who book through ECOs fall under different categories.

The HC also held that Section 9(5) of the CGST Act of 2017 creates a statutory fiction which permits the Government to consider the ECOs as the deemed suppliers of the services availed by the consumer through the online platform facilitated by the ECOs and hence, all compliances, including tax payments must be duly met by the ECOs.

The HC also noted that the intention of RCM provisions is to plug revenue gap and hence, there is no vested right of the ECOs to claim continuity of exemption which is available to street hailed auto rickshaws.

Hence, for the above reasons the HC ultimately held that the impugned notifications are not violative of Articles 14, 19(1)(g) and 21 of the Constitution of India and they do not create unreasonable classification.



**SBGCO Comments:**

The decision of the Delhi HC has distinguished the services from ECOs to counter the claim of the ECOs treating themselves on par with street-hailed auto rickshaws. The claim of ECOs also fails for the experience and assurance of safety provided, even when “physical ride in an auto rickshaw” remains same in both cases. The HC has held the ECOs as an independent supplier of service to the consumer.

**4. Grundfos Pumps India Pvt Ltd vs. Joint Commissioner of GST & CE., [2023-VIL-214-MAD]**

**Background Facts:**

The petitioner claimed Transition credit in GSTR 3B since the same did not reflect in ECL after filing of Form GST TRAN-1. Subsequently, when balance reflected in ECL by virtue of Form GST TRAN-1, the petitioner reversed ITC previously claimed in Form GSTR-3B, without being set off / utilized against output tax liability at any point of time till the reversal date.

**Issue Raised:**

Can the Department demand interest at 24% on such reversal of credit?

**Gist of the Decision:**

The Hon’ble HC held that after the retrospective amendment to Section 50(3) of the CGST Act, 2017 liability to interest will only emerge in a situation where there has been actual utilisation of credit by the assessee. In the present case, ITC was not utilized and hence, there could not be any demand for interest as well. Further, the HC also made an interesting observation that in the present case, even though the credit was NOT utilized by assessee at the time of reversal, the primary fault of not maintaining ECL correctly was that of the Department and hence, petitioner was justified to claim transition ITC by all legitimate methods possible.

**SBGCO Comments:**

The above decision may be useful in future cases where the delay could not be attributed to the assessee, such as payment made via Bank but not reflecting in Electronic Cash Ledger at the time of filing of Form GSTR-3B on the last day and similar other cases.





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

### **1. CAE Flight Training India Private Ltd [KAR ADRG 12/2023 (Karnataka) = 2023-TIOL-44-AAAR-GST]**

#### **Background facts:**

Applicant is a Directorate General of Civil Aviation (DGCA) Approved Training Organisation (ATO) engaged in the business of providing type rating training on simulators for various fleet of aircraft to the trainees aspiring to obtain licenses and ratings from the DGCA. As per the applicant, the flight training services imparted by them enhances the skill and knowledge of trainees.

#### **Questions raised:**

Whether the supply of the aircraft type rating training services to commercial pilots in accordance with the training curriculum approved by the DGCA for obtaining the extension of aircraft type ratings on their existing licenses would be exempted from levy of GST under Sr. No. 66 (a) of the NN 12/2017-CT (R) dated 28.06.2017?

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

The AAR has relied on DGCA circulars dated 14-12-2009 and 17-12-2009 which clarify that course completion certificate from applicant are required for appearing for examination before the approved examiner of the DGCA. The AAR has held that the Training imparted by the applicant lead to course completion certificate which enables the candidate to appear for examination before the DGCA. Only on passing the examination conducted by approved examiner, the DGCA records aircraft type rating extension to the commercial pilot licences of the pilots. Hence, the applicant is not eligible for exemption as it does not provide a qualification recognised by any law to be eligible for exemption.

#### **SBGCO comments:**

It is important to note that the exemption entry under GST is very similar to the erstwhile Service Tax laws and in the erstwhile regime, there have been a few decisions wherein exemption has been granted treating the completion of training programme as a qualification recognised under the law [Indian Institute of Aircraft Engineering v. Union of India (2013-TIOL-430-HC-DEL-ST) & Commissioner v. Garg Aviations Ltd. (2014-TIOL-837-HC-ALL-ST)]. The AAR have not taken cognisance of these judgements which have elaborated on what could be treated as “recognized” under existing law.

### **2. Sankalp Facilities and Management Services Pvt Ltd [Guj/GAAR/Appeal/2023/03 = 2023-TIOL-10-AAAR-GST]**

#### **Background facts:**

Applicant is engaged in the business of providing manpower supply for housekeeping, cleaning, security, data entry operator. The AAR had denied exemption for services rendered to Government Colleges, Government Hospitals, Government offices under Sr. No 3 of NN. 12/2017-CT (R) dated 28.06.2017. The Applicant preferred an appeal against the order of AAR before the Appellate AAR.



**Questions raised:**

Whether manpower supply by the appellant for housekeeping, cleaning, security, data entry etc. to various Government departments, would be eligible for exemption under GST?

**Gist of the Ruling:**

The AAAR held that “Government Colleges, Government Hospitals” are not covered indirectly also by the exemption notification. Further, even though the appellant may be providing manpower supply services to the Government offices, but the said services are in no way related to the function entrusted to a Panchayat under article 243G of the Constitution or function entrusted to a Municipality under article 243W of the Constitution.

**SBGCO comments:**

The AAAR has correctly analysed that exemption is not applicable when services are provided to Government Colleges, Government Hospitals as they are not the designated recipients in Sr. No. 3 of exemption notification. Further, it is important to note that not every service to State Government / Central Government/ Local Authority would be exempt as exemption is only provided to such pure services which are related to the function entrusted to a Panchayat or Municipality under the respective Article of the Constitution of India.



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

<b>S N</b>	<b>Due Date</b>	<b>Form</b>	<b>Period</b>	<b>Periodicity</b>	<b>Special Remarks</b>
1.	10.05.2023	GSTR - 7	April 2023	Monthly	To be filed by those who are required to deduct TDS under GST
2.	10.05.2023	GSTR - 8	April 2023	Monthly	To be filed by those who are required to collect TCS under GST
3.	11.05.2023	GSTR - 1	April 2023	Monthly	Taxpayers filing GSTR - 1 monthly
4.	13.05.2023	GSTR - 6	April 2023	Monthly	To be filed by an ISD
5.	13.05.2023	IFF	April 2023	Monthly	To be filed by those under QRMP Scheme (Optional)
6.	13.05.2023	GSTR - 5	April 2023	Monthly	To be filed by a non-resident foreign taxpayer registered in GST
7.	20.05.2023	GSTR - 3B	April 2023	Monthly	To be filed by Taxpayer filing monthly GSTR 3B
8.	20.05.2023	GSTR - 5A	April 2023	Monthly	To be filed by non-resident Online Information and Database Access or Retrieval (OIDAR) services provider
9.	25.05.2023	PMT - 06	April 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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