

SBGCo Connect September 2023

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T A X

D E A D L I N E



Greetings to all our readers!

We are now in the last stretch of the Calendar year 2023, which signals the arrival of various tasks and activities to be undertaken for GST compliance relating to year ended 31.03.2023 (i.e., FY 2022-23). Various activities to be undertaken have been summarized as under:

Activity/ Task/ Return	Deadline
Impact of Annual Ratio under Rule 42 of the CGST Rules, 2017	GSTR 3B of September 2023
Reversal of ITC to the extent of ITC claimed against vendors who have not filed Form GSTR 3B for FY 2022-23 under Rule 37A of CGST Rules, 2017	
Expiry of time limit for claiming ITC pertaining to FY 2022-23	GSTR 3B of October 2023 filed on or before 30 th November 2023
Expiry of time limit to issue credit note against invoice pertaining to FY 2022-23	GSTR 1 of October 2023 filed on or before 30 th November 2023
Amendment in any invoice pertaining to FY 2022-23	
Annual Return (GSTR 9/9A) and Reconciliation statement for FY 2022-23	31 st December 2023

We would like to bring our reader's attention to the latest development of "Electronic Credit Reversal and Re-claimed statement" functionality on the portal. Taxpayers must carefully read the instructions issued by the GSTN portal, summarized in this newsletter, before taking any action w.r.t updating the opening balances of ITC reversal values.

The GSTN portal has also announced that, based on data analysis and risk parameters, certain applicants applying for fresh registration may be required to undergo biometric-based Aadhaar authentication along with clicking of photograph by visiting GST Suvidha Kendra. This functionality has been launched in Puducherry from 30th August, 2023 in the pilot phase. The ARN for such applicants will only be issued after successful Biometric-based Aadhaar Authentication. The detailed advisory 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. [Recent Advance Rulings and analysis of the same](#)
- D. [GST Compliance Chart for the month of September 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. GST Portal updates: Introduction of “Electronic Credit Reversal and Re-claimed statement” on GST Portal

- The GST portal has introduced a new functionality to track ITC that has been reversed in Table 4B(2) of Form GSTR 3B starting from August 2022 and thereafter re-claimed in Table 4D(1) of Form GSTR 3B.
- The purpose of this statement is to facilitate the taxpayers accurate reporting of ITC reversal and reclaim and to avoid clerical mistakes.
- Hence, currently, the taxpayers are provided with the facility to report their cumulative ITC reversal (i.e., ITC reversed in an earlier return but has not yet been reclaimed) as opening balance for “Electronic Credit Reversal and Re-claimed Statement.”
- The same can be accessed from the following path on the GST portal:
Services → Ledger → Electronic Credit Reversal and Re-claimed Statement → Report ITC Reversal Opening Balance
- Reporting of opening balance is to be done as under:

Type of Registered taxpayer	Opening Balance Reporting requirement
Filing monthly Form GSTR 3B	ITC reversal done till July 2023
Filing quarterly Form GSTR 3B	ITC reversal done till June 2023 i.e., Q1 of FY 23-24

- The said window to update opening balance for ITC reversal will be available on the GST portal till 30th November 2023 with 3 (three) amendment opportunities to correct any mistakes in reporting. Thereafter, till 31st December 2023, only amendments will be permitted but no option for fresh reporting.
- The detailed advisory can be accessed by clicking [here](#).

GSTN portal advisory dated 31.08.2023.

SBGCO Comments

The introduction of this new functionality on the GST portal is in line with the new Rule 88D introduced by the Government (explained later in this newsletter) whereby any excess claim of ITC shall automatically trigger a notice on the GST Portal and a positive balance in this “Electronic Credit Reversal and Re-claimed Statement” will ensure that taxpayers are not claiming any excess credit from their previous reversals.

II. ‘Composition scheme taxpayers’ & ‘Persons not liable to obtain registration’ can now supply goods through E-commerce Operators

A. Composition Scheme Taxpayers

- The taxpayers who had opted to pay tax under the composition scheme were not permitted to supply goods through e-commerce operators (ECO).



- However, along with suitable amendments to Section 10 of the CGST Act, 2017, the CBIC has now permitted (w.e.f. 01.10.2023) the composition scheme taxpayers to supply goods through ECO provided that ECO ensures the following:
 - a. For composition scheme taxpayers, only intra-state supply to be permitted
 - b. TCS under GST is deducted by ECO and deposited with the Government along with Form GSTR-8

Notification No. 36/2023 - Integrated Tax dated 04.08.2023

B. Composition Scheme Taxpayers

- Notification 34/2023 - Central Tax dated 31.07.2023 provided the scheme wherein persons dealing only in exempted supply of goods would now be permitted to supply such goods through ECO without obtaining GST registration and the conditions to be followed by such person.
- The present notification is issued notifying the conditions which the ECO is required to adhere to while permitting unregistered persons to supply exempted goods through ECO. The said conditions are as under:
 - a. ECO shall permit supply of exempted goods only after enrolment number is obtained by such unregistered person
 - b. Only intra-state supply to be permitted for supply of goods through ECO by such unregistered persons
 - c. TCS under GST not to be deducted by the ECO
 - d. The details of such exempted supply shall be reported by ECO in Form GSTR-8
 - e. In case multiple ECO are involved in a single supply of exempted goods, then the ECO required ensure above compliances is the one who finally releases payment to such unregistered persons.
- The taxpayers who had opted to pay tax under the composition scheme were not permitted to supply goods through e-commerce operators (ECO).

Notification No. 37/2023 - Integrated Tax dated 04.08.2023

SBGCO Comments

The Government is constantly evolving the provisions of the law to increase taxpayer base. The latest amendments, subject to fulfilment of certain conditions, providing option to composition scheme taxpayers to supply goods & unregistered persons to supply exempted goods through ECO w.e.f. 01.10.2023 is one more example in this regard.

III. Amendment to CGST Rules, 2017.

A. Registration related changes:

- Rule 9 (Verification of Registration application)
In certain cases where Aadhaar authentication is not opted by the applicant of fresh GST registration, the CGST Rules provided that proper officer could carry out physical verification of the premises in the presence of such applicant.



The said rule is now amended and the Rules now permit proper officer to carry out physical verification of the premises without the presence of such applicant as well.

- Rule 10A (Bank Account details)

After obtaining GST registration, Bank account details were previously required to be updated within 45 days of obtaining such registration or filing of first Form GSTR-3B. The said window has now been truncated and the updated provision require bank account details to be updated within 30 days of obtaining such registration or filing of first Form GSTR-1.

Correspondingly, Rule 59 has also been amended to provide that Form GSTR 1 shall not be permitted to file unless Rule 10A has been complied with.

- Rule 21A (Suspension of GST registration)

Previously, GST registration could be suspended on the grounds of significant anomalies/ mismatch in outward and inward details relating to a registered person. However, the latest amended provisions state that, along with previous reasons, non-compliance with Rule 10A (i.e., not updating bank account details within prescribed time limit) could additionally also lead to suspension of GST registration which may lead to cancellation of registration unless compliance with the provisions of rule 10A is done.

- Rule 23 (Revocation of cancellation of GST registration)

The CGST Rules 2017 required application for revocation to be filed within 30 days of date of communication of cancellation order or such additional time as permitted.

The said rule is now amended and the time limit to file revocation application is made standard 90 days from date of communication of cancellation order.

New proviso is also inserted wherein special powers have been granted to the Commissioner to extend such period of 90 days by a further period of 180 days, to be exercised only when sufficient cause is shown by the aggrieved taxpayer and such an order is recorded in writing.

- Rule 25 (Physical Verification of business premises)

The entire rule relating to physical verification of business premises has been revamped and new rules have been prescribed.

According to new rules, if physical verification of business premise is done after grant of registration, the officer is required to upload verification report along with photographs in Form GST REG-30 with 15 working days of the visit.

If physical verification is undertaken before grant of registration, then verification report along with photographs, shall be uploaded in Form GST REG-30 at least 5 days prior to completion of time limit as prescribed in Rule 9(1) of the CGST Rules, 2017.

SBGCO Comments

The changes incorporated in the CGST Rules, 2017 regarding registration are all made effective from 04.08.2023. The amendments highlight the change in mind-set of the Government whereby they want to ensure that GST registration is not misused and the same is granted after due verification only. The time limit for updating bank details is



also truncated and non-compliance of this could lead to non-filing of Form GSTR-1 and/or suspension of registration as well.

B. Reversal of ITC related changes

- In the provisions relating to reversal of input tax credit, Explanation to Rule 42 and 43 have been amended by the CBIC.
- Explanation 1(c) to Rule 43 provided that value of exempt supply shall exclude income from transportation of goods to a place outside India via vessel. Since, 01.10.2022, Income from transportation of goods to a place outside India via vessel is taxable at 5%, such an exclusion from value of exempt supply is redundant and hence, the same is omitted from the rules w.e.f. 04.08.2023.
- Additionally, explanation 3 will be added w.e.f. 01.10.2023, whereby, value of supply of goods from Duty Free Shops at arrival terminal at international airports to the incoming passengers shall be treated as exempt value for the purposes of Rule 42 and 43.

C. Relaxation for ECO & supplier of OIDAR services for issuing Tax invoice

- Rule 46 of the CGST Rule required ECO & supplier of OIDAR services to capture PIN code along with state name when the supply was made to unregistered customers. However, the said rule is now relaxed whereby, ECO & supplier of OIDAR services need not capture the PIN code in tax invoices issued to unregistered customers w.e.f. 04.08.2023.

D. ITC mismatch notice (New Rule 88D)

- A new Rule 88D has been introduced w.e.f. 04.08.2023 wherein, the Government is now empowered to issue notice in Part A of Form DRC-01C to intimate the registered person to explain the reason for excess claim of ITC in Form GSTR 3B in comparison to the details of ITC auto-populated by Form GSTR 2B, beyond a certain percentage as recommended by the GST Council.
- The taxpayer will be intimated via email and notice will be issued on the GST portal for necessary action from the taxpayer.
- The notice will give option to the taxpayer to either pay the excess claim of ITC through Form GST DRC-03 or provide necessary explanation for the aforesaid difference within a period of 7 days in Part B of Form DRC-01C.
- The said rule also empowers the assessing officers to issue a show cause notice under Section 73/ 74 of the CGST Act, 2017 if the amount remains payable or no explanation is furnished by the taxpayer.

SBGCO Comments

This new rule requires taxpayer to ensure any excess claim over and above the auto-populated ITC values is well documented and to be on their toes specially w.r.t to compliances to notices issued on the GST portal. The taxpayers must make a routine to constantly monitor their GST credentials to ensure timely compliances.



E. GST Return related changes

- Rule 59 of the CGST Rules 2017 has been amended w.e.f. 04.08.2023 to include 2 new restrictions for filing of Form GSTR 1/ IFF along with previous restrictions viz.,
 - a. Non-filing of response to notice issued under Rule 88D (explained above)
 - b. Not complying with provisions of Rule 10A (explained above)
- Rule 64 (Form GSTR5A) and Rule 67 (Form GSTR 8) have suitably modified to provide clarity regarding the coverage of the said returns and the said change is applicable from 01.10.2023.

SBGCO Comments

All taxpayers who obtain new registration must ensure that they comply with provisions of Rule 10A without fail and update Bank account details on the GST portal within the prescribed time limit. Non-compliance with the said provisions could not just lead to restriction in filing of Form GSTR-1, but also lead to suspension of registration, as seen in the earlier amendment.

F. Changes to Refund procedure

- Casual Taxable Person (CTP) related change

Rule 89 of the CGST Rule prescribed that excess payment of tax by casual taxable person could be adjusted in the last return filed by them. However, the rule is now amended w.e.f. 04.08.2023 and states that any excess payment of tax by casual taxable person would be claimed as refund only after filing of last return by them.
- Supporting documentation

The supporting documents for claiming refund of excess payment of tax now requires document proof for claiming refund of interest on such excess payment of tax.
- Modification in computing 'delay period' while granting of refund

Provision for granting of interest on delayed refund has now been amended w.e.f. 01.10.2023 whereby, any time period taken by taxpayer either to submit additional details or beyond the period of 15 days granted by notice in Form GST RFD-08 (SCN) to reply in Form GST RFD-09 would be excluded from computation of 'delay period' for granting interest.
- Interest would not be granted for delayed period if incorrect bank account details are provided by the taxpayer as well.

SBGCO Comments

Refund procedure introduced for casual taxable persons and hence, it now becomes imperative that liability paid before grant of CTP registration is not over-estimated.

On the flip side, the Government has amended rules to ensure that interest payment on delayed refund excludes time limit granted to/taken by taxpayer for replying/ submitted additional details.



G. Appeals to Appellate Authority

- Filing procedure

Rule 108 (appeal by taxpayer) and 109 (appeal by tax officer) is now amended to mandate only electronic filing of appeal to appellate authority.

Manual filing of appeal shall only be permitted in two cases:

- a. When the Commissioner so notifies
- b. When the decision or order against which Appeal is required to be filed is not available on the common GSTN portal.

H. E-way Bill relate update - New rule for generation of E-way bill for intra-state movement of gold, precious stones, etc.

- Rule 138F has been introduced w.e.f. 04.08.2023 whereby, the CBIC has granted state / UT authorities, the power to notify rules for generation of E-way bill where the consignment value is not less than Rs. two lakhs for the following goods:

- a. Natural or cultured pearls and precious or semi-precious stones; precious metals and metals clad with precious metal
- b. Jewellery, goldsmiths' and silversmiths' wares and other articles except imitation jewellery

- The other provisions of the said rule are very similar to existing rules for generation of E-way bill as provided under Rule 138 of the CGST Rules, 2017.

- The provisions of sub-rule (10), sub-rule (11) and sub-rule (12) of rule 138, rule 138A, rule 138B, rule 138C, rule 138D and rule 138E shall, mutatis mutandis, apply to this new rule as well.

SBGCO Comments

The biggest challenge after introduction of such law is ensuring the security of data available on EWB portal related to such high value goods. Government must ensure that appropriate checks and security measures are in place so that such data remains safe.

I. New Addition under Tax recovery mechanism w.e.f. 04.08.2023

- When Tax and/or interest are payable by taxable person in terms with Rule 88C (difference in liability reported in GSTR 1 and GSTR 3B) and the same are not paid, then the proper officer shall intimate the said liability in Form GST DRC-01D.

- Such Tax and/or interest dues shall also be posted in Part-II of Electronic Liability Register in Form GST PMT-1 and such intimation shall be treated as the notice for recovery.

J. Compounding of offences

- New sub-rule (3A) has been added w.e.f. 01.10.2023 whereby upper and lower limits have been prescribed for the Commissioner while deciding the quantum of compounding amount for various offences listed under Section 132(1) of the CGST Act, 2017.



K. New Rule 163 - Consent based sharing of information

- The CGST Rules, 2017 now provide for a specific rule to provide for a specific procedure for consent-based sharing of information introduced by Section 158 of the CGST Act, 2017 vide the Finance Act, 2023. The said provisions shall be effective from 01.10.2023.
- Details furnished in Form GSTR-1, Form GSTR 3B and Form REG-01 may be furnished directly by the GST portal to the requesting system once the tax payer has provided consent for sharing of such information.

L. Changes in various Forms prescribed by the GST Rules (w.e.f. 01.10.2023).

- Form GSTR 3A to now include notice to return defaulter u/s 46 for not filing annual return (Form GSTR 9/9A)
- Suitable changes made to Form GSTR 5A and GSTR 8 in accordance with changes made to Rule 64 and 67 of the CGST Rules, 2017
- Amendments made to Statement 7 under Annexure I of Form GST RFD-01 to provide for changes made to refund process for Casual Taxable Persons.
- Form GST DRC-01C and Form GST DRC-01D introduced in accordance with updated provisions of the CGST Rules, 2017.

- Form GSTR 9

The reporting requirements for Annual Return in Form GSTR 9 of FY 2022-23 are same as FY 2021-22. The methodology and relaxation granted for reporting of values in FY 2021-22 continue for FY 2022-23 as well.

- GSTR 9C

Major changes prescribed for Form GSTR 9C for FY 2022-23 as under:

- Up to FY 2021-22, all Tables 5B to 5N were optional and taxpayer had an option to report the entire difference under Table 5O of Form GSTR 9C. However, w.e.f. FY 2022-23, except for Table 5B (Unbilled revenue at the beginning of Financial Year), all tables from 5C to 5N are mandatory.
- Table 14 (nature of expense wise listing of expenses and ITC) continues to be optional for FY 2022-23 as well.

Notification No. 38/2023 - Central Tax dated 04.08.2023

SBGCO Comments

For the past couple of years now, the Government has introduced one additional reporting requirement which was optional until now. Last year, HSN reporting in Form GSTR 9 and reporting of complete details in Table 12 of GSTR 9C was introduced. This year, there is no change in reporting requirements compared to Form GSTR 9 of FY 2021-22 but in Form GSTR 9C, Table 5B to 5N which were previously optional are now mandatory w.e.f. FY 2022-23 except for Table 5B. Hence, the taxpayers cannot reflect turnover related adjustments in Table 5O for FY 2022-23, unless the adjustment does not fall in the listed categories provided in Table 5 of Form GSTR 9C.



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

Particulars	Period	Previous Due Date	New Due Date	Notification No.
Form GSTR 1	April-23	31.07.2023	25.08.2023	<i>41/2023- Central Tax</i>
	May-23	31.07.2023		
	June-2023	31.07.2023 (M) 31.07.2023 (Q)		
	July-2023	11.08.2023		
Monthly Form GSTR 3B	April-23	31.07.2023	25.08.2023	<i>42/2023- Central Tax</i>
	May-23	31.07.2023		
	June-2023	31.07.2023		
	July-2023	20.08.2023		
Quarterly Form GSTR 3B	June 2023	31.07.2023	25.08.2023	<i>43/2023- Central Tax</i>
Form GSTR 7	April-23	31.07.2023	25.08.2023	<i>44/2023- Central Tax</i>
	May-23	31.07.2023		
	June-2023	31.07.2023		
	July-2023	10.08.2023		



B. Recent Decision from the Judiciary:

1 & 2. Suncraft Energy Pvt Ltd vs. Asst Commissioner, State Tax [2023-TIOL-917-HC-KOL-GST] & Aastha Enterprises vs. State of Bihar [2023-TIOL-1021-HC-PATNA-GST]

Common Background facts:

The Petitioners purchased goods and services from their suppliers and satisfied all conditions of Section 16(2) of the CGST Act, 2017 (as relevant at that time - initial period of the GST law) including payment to vendor except that the vendor had defaulted by not paying the tax collected from the Petitioners to the Government. Hence, the officer proceeded to recover alleged incorrectly availed ITC from the Petitioners.

Common Key Issue Raised:

Whether the Petitioner is eligible to avail the credit of the input tax as per Section 16(2) of the CGST Act, 2017 when payment has been made to the supplier but the tax in respect of such supply has not been actually paid to the Government?

Gist of the Decisions:

In the case of 'Suncraft Energy Pvt Ltd' (West Bengal)	In the case of 'Aastha Enterprises' (Bihar)
<ul style="list-style-type: none">- Without resorting to any action against the defaulting selling dealer, the tax officer has acted arbitrarily by ignoring the tax invoices produced by the purchasing dealer along with the bank statement.- The tax officer must first proceed to take action against the defaulting selling dealer and unless and until an exception case emerges such as collusion, missing selling dealer, closure of business of selling dealer, etc. only then action must be initiated against the purchasing dealer.	<ul style="list-style-type: none">- The statutory levy and the further benefit of ITC conferred on the purchasing dealer depends not only on the collection by the seller but also the payment to the Government by the seller.- Production of tax invoice, establishment of the movement of goods and receipt of the same and payment of consideration would not enable claim of ITC unless the tax is not paid to the Government.- Section 16(2)(c) must be mandatorily satisfied before any claim of ITC can be raised by the purchasing dealer.

SBGCO Comments:

Same issue but two contradictory Hon'ble High Court decisions within the same month. West Bengal state's Hon'ble HC orders the tax officer to first take action against the defaulting the dealer vendor, whereas Bihar state's Hon'ble HC orders that ITC in the hands of the purchasing dealer can be disallowed for non-compliance by the vendor. The issue regarding eligibility of ITC in the hands of the purchasing dealer is a contentious one which might not settle unless and until the matter is decided by the Hon'ble Supreme Court. Until then, it is advisable to take benefit of the circulars issued by the CBIC applicable till 31.12.2021 and resolve this issue with the help of appropriate certificate/ confirmation letters.



3. Jai Balaji Paper Cones vs. Asst Commissioner, State Tax [2023-TIOL-949-HC-MAD-GST]

Background Facts:

The Petitioner purchased a consignment of goods from their vendor on 23.11.2018. They paid the tax due on these invoices to the vendor, but the vendor's registration was cancelled from a prior date (31.10.2018). The Department demanded recovery such ITC from the Petitioner. The Petitioner filed the present writ petition so as to stop the officer from recovering the ITC from them when they have already paid the taxes to the Supplier.

Issue Raised:

Whether the officer can proceed to recover the ITC from the Petitioner given the facts of the case?

Gist of the Decision:

The Hon'ble HC held that section 16(2)(c) of the CGST Act, 2017 requires tax to be paid to the Government, and in the present case, the registration of the vendor was cancelled before the date of issuance of the invoice. Hence, the officer can proceed to recover the ITC availed by the Petitioner on such invoices since vendor could not have paid the tax in such situation. However, the Hon'ble HC also noted that the Petitioner can independently recover such taxes paid from their supplier.

SBGCO Comments:

It is strange that the officers do not take action against such vendors (who is also made as a respondent party to the writ petition) who continue to collect tax despite cancelled registration but proceed to take action against genuine taxpayers with bonafide intentions. Does the law expect that each taxpayer should keep a track of active registration of their vendor for every time they make purchases? In the present case, though the Hon'ble HC entitled the Appellant to recover dues from the supplier, but simultaneously why didn't it direct officers to initiate proceedings against such defaulting vendors remains a mystery.

4. Raja Stores vs. Asst Commissioner [2023-TIOL-1065-HC-MAD-GST]

Background Facts:

The Petitioner had filed application for closure of business and cancellation of registration. The proper officer obliged after due verification and issued an order for cancellation of registration. After couple of months of issuance of cancellation order, the Department issued a notice to conduct audit to the said entity.

Issue Raised:

Can the Department issue notice for conducting audit after cancellation of GST registration?

Gist of the Decision:

The Hon'ble HC held that in accordance with Section 65 of the CGST Act, 2017, audit can be conducted only for a registered person. Hence, the auditee must be construed as existing concern and not an unregistered person. Hence, the notice for conduct of audit was set aside by the Hon'ble HC but it observed that the department can proceed against such unregistered person under Section 73/ 74, if required.



SBGCO Comments:

The provisions of the law must be read in the manner in which they are laid down and no interpretation must be added or omitted by the Courts while interpreting the same ('Literal Rule' of interpretation of statutes). The Hon'ble HC has rightly held that audit can be conducted only for a registered person and in the present case, has rightly struck down the notice issued u/s 65 of the Act for conduct of audit.

5. Cube Highway and Transportation Asset Advisor Pvt Ltd vs Asst. Commissioner, CGST [2023-TIOL-1022-HC-DEL-GST]

Background Facts:

The Petitioner is engaged in the business of rendering investment advisory services related to the investment by non-resident group companies (i.e., foreign service recipient) in the target companies in India, which are engaged in the transportation sector. In terms of the Agreement, the Petitioner agreed to provide Advisory Support Services at arm's length price determined on cost-plus markup basis. The services rendered by the petitioner were accepted as 'export of services' by the Revenue under the Pre-GST regime. The Petitioner applied for refund of accumulated ITC in the GST regime. However, under the GST regime, refund was rejected on the following grounds:

- The petitioner is an 'intermediary' and hence the services did not qualify as 'export of services'
- Alternatively, the PoS is in India u/s 13(3)(b) of the IGST Act, 2017
- Alternatively, the PoS is location of immovable property in India u/s 13(4) of the IGST Act, 2017

Issue Raised:

Can the refund of accumulated ITC be denied to the Petitioner for the reasons mentioned above? Whether in the context of services rendered by the petitioner, is he an 'Intermediary' and its services are covered under Section 13(8)(b) and/ or under Section 13(4) and/ or under Section 13(3)(b) of the IGST Act?

Gist of the Decision

The Hon'ble HC analysed the agreement provided by the Petitioner and arrived at a conclusion that the services provided by them do not classify as 'Intermediary' services relying on the CBIC Circular No 159/15/2021-GST issued on 20.09.2021. The Hon'ble HC held that such services do not relate to immovable property and hence, PoS cannot be determined on the basis of Section 13(4) of the IGST Act. The services provided by the Petitioner did not require physical presence of the recipient as provided under Section 13(3)(b) of the IGST Act and hence the same was held to be not applicable in the present case.

The Hon'ble HC concluded that the services rendered by the Petitioner fulfilled the conditions of export of services and thereby directed the Department to release the refunds due to them.

SBGCO Comments:

When it comes to granting refunds, Department will always try to find new ways to delay/ block the refunds. The decision of the Hon'ble HC is welcome one that will assist all advisory companies providing services to foreign customer to receive refund in a timely manner.



C. Recent Decisions from Advance Authority

1. Karnani FNB Specialities LLP [Order No. 02/WBAAAR/APPEAL/2023 (West Bengal) = 2023-TIOL-22-AAAR-GST]

Background facts:

The Applicant is availing some common ITC at Head office which is being used both for the supply of services provided at Banquet Hall and the services provided at their Restaurant where alcoholic liquor for human consumption is also served. The Applicant filed an application for advance ruling on the point that whether they are required to reverse common ITC to the extent of the sale of alcoholic liquor for human consumption. The Advance Authority held that reversal of ITC is required. Hence, the present appeal was filed challenging the order of the AAR.

Key Question raised:

Whether or not the applicant is obliged to reverse ITC under Section 17(2) of the CGST Act read with Rule 42 of the CGST Rules, in view of the sale of alcoholic liquor for human consumption effected by it at its premises?

Gist of the Ruling:

The AAAR held that the sale of alcoholic liquor for human consumption is a non-taxable supply under Section 2(78) of the GST Act, 2017 and accordingly is an exempt supply under Section 2(47). Therefore, the applicant is required to reverse ITC in terms of sub-section (2) of section 17 ibid read with Rule 42 of the GST Rules, 2017 for sale of alcoholic liquor for human consumption.

SBGCO comments:

The above decision of the AAAR (and previously the AAR) has correctly taken into consideration the relevant definitions of 'non-taxable supply' and 'exempt supply' appropriately held that reversal of common ITC shall be required to the extent such common ITC is attributable towards sale of alcoholic liquor for human consumption.

2. J. K. Fenner (India) Limited [Order No. 08/ARA/2023 (TN) = 2023-VIL-161-AAR]

Background facts:

The Applicant constantly incur expenditure on repairs and maintenance of factory buildings for continuity of its seamless production. Repair works in the factory building are in the nature of painting, renovation, debris removal, roof changing etc

Questions raised:

Whether GST paid on works contract for carrying out repair of factory building shall be available for ITC to the extent the said expense is not capitalized to the said immovable property and such expense is treated as revenue in nature?



Gist of the Ruling:

The AAR has held that ITC on repairs is eligible for claim to the extent of non-capitalization of expenses in their accounts as Section 17(5)(d) blocks ITC on goods and services received to the extent of capitalization to immovable property.

SBGCO comments:

The question of disallowance of ITC claim always lingers like a double-edged sword in the minds of taxpayers, especially if the amount involved is huge and where there are some doubts regarding applicability of provisions regarding blocked credits. The above order shall put to rest any qualms which might exist w.r.t claim of ITC for non-capitalized Expense. Once the expense is treated as revenue expenditure in accordance with the relevant accounting standard, then eligibility of ITC for such expense would not be challenged under Section 17(5)(d) of the CGST Act, 2017.

3. M/s. Sri Kalaiselvan Sago Factory [Order No. 09/ARA/2023 (TN) = 2023-VIL-160-AAR]

Background facts:

The Applicant has purchased a JCB from a registered vendor for the purpose of movement of goods inside the factory.

Questions raised:

Whether GST paid by the applicant at the time of purchase or repairs including spares w.r.t such JCB used by the business for movement of goods in its place of business is eligible as input tax credit?

Gist of the Ruling:

The AAR has analysed Section 2(28) of the Motor Vehicles Act, 1988, the FAQ published in GST Sectoral Series - mining, Apex Court Judgement in the case of Goodyear India Vs UOI [1997 (92) E.L.T. 14 (S.C.)] along with Section 17(5) of the CGST Act, 2017 and held that earth moving machinery such JCB is not a motor vehicle for the purposes of Section 17(5) of the CGST Act, 2017. Hence, GST paid for purchase and repairs including spares would be eligible for claim of ITC to the Applicant.

SBGCO comments:

Though JCB may have wheel to move around, the primary purpose is not to be used as vehicle but for purposes such as mining, excavation, material handling and so on. The AAR has correctly deciphered the intention of the law-makers behind restricting ITC under Section 17(5) of the CGST Act, 2017 in relation to motor vehicles while allowing the claim of ITC in the above order.



D. GST Compliance chart for September 2023

SN	Due Date	Form	Period	Periodicity	Special Remarks
1.	10.09.2023	GSTR - 7	August 2023	Monthly	To be filed by those who are required to deduct TDS under GST
2.	10.09.2023	GSTR - 8	August 2023	Monthly	To be filed by those who are required to collect TCS under GST
3.	11.09.2023	GSTR - 1	August 2023	Monthly	Taxpayers filing GSTR - 1 monthly
4.	13.09.2023	GSTR - 5	August 2023	Monthly	To be filed by a non-resident foreign taxpayer registered in GST
5.	13.09.2023	GSTR - 6	August 2023	Monthly	To be filed by an ISD
6.	13.09.2023	IFF	August 2023	Monthly	To be filed by those under QRMP Scheme (optional)
7.	20.09.2023	GSTR - 3B	August 2023	Monthly	To be filed by Taxpayer filing monthly GSTR 3B
8.	20.09.2023	GSTR - 5A	August 2023	Monthly	To be filed by non-resident Online Information and Database Access or Retrieval (OIDAR) services provider
9.	25.09.2023	PMT - 06	August 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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