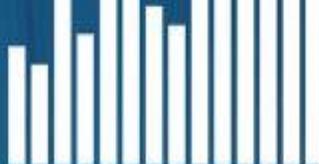


01010
11001
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Approaching...

Year-End GST compliances



SBGCo Connect December 2024

S B Gabhawalla & Co
Chartered Accountants





Greetings to all our readers!

December is here, and it's an important time for taxpayers who need to complete their Annual Return in Form GSTR-9 and the Self-Certified Reconciliation Statement in Form GSTR-9C. While filing annual returns has become smoother over the past year or two, the updated forms were released only in October 2024 this time. However, going by the past trend, no extension should be expected from the CBIC for the annual compliances. Along with the regular monthly GST return filings, it's a good idea to complete annual filings well before the deadline. Waiting until the final days of December can lead to errors and delays. Planning ahead and acting on time can help ensure everything goes smoothly.

In a fresh move, the GSTN portal has announced that from 1st April 2025, taxpayers with an AATO of INR 10 crores and above would not be allowed to report e-Invoices older than 30 days from the date of reporting on IRP portals. The said limit was INR 100 crores since September 2023, which is now proposed to be lowered to INR 10 crores. Hence, all taxpayers who have an AATO greater than INR 10 crores must now become vigilant and ensure all E-invoices are generated within 30 days from the invoice date. If not, IRN generation would not be permitted and it could result into non-compliance of E-invoice provisions. The said advisory, dated 5th Nov 2024 can be accessed by clicking [here](#). Other advisories issued during the month have been covered in newsletter as well.

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 Ruling and analysis of the same](#)
- D. [GST Compliance Chart for the month of December 2024](#)

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

Team SBGCo



A. What's New?

I. Notifications issued during the month

- **GSTR 3B due date for October 2024 revised for taxpayers in Maharashtra, Jharkhand and Manipur.**
 - In view of the State Assembly elections to be held on 20th November 2024, the CBIC had announced that the due date for taxpayers having GST registrations in Maharashtra and Jharkhand shall be 21st November 2024.
 - W.r.t. taxpayers having place of business in Manipur, the due date for filing GSTR 3B for the month of October 2024 has been notified as 30th November 2024.
 - In case any taxpayer from the above three states could not file his GSTR 3B return up to the revised due date, then they should compute the interest liability from 21st November (MH & JH) / 30th November (Manipur) and not 20th November.

Notification nos. 26/2024 - Central Tax dated 18.11.2024. & 29/2017 - Central Tax dated 27.11.2024

- **More Jurisdictions granted power to adjudicate SCNs issued by DGGI.**
 - The Notification No. 02/2017 - CT (dated 22.06.2017) was initially amended vide Notification No. 02/2022 -CT (11.03.2022) to grant powers to 10 Jurisdictions to adjudicate notices issued by the DGGI.
 - Vide the notification no. 27/2024 - CT (dated 25.11.2024), the said list has been increased to 23 Jurisdictions who can now adjudicate SCN issued by the DGGI (exercisable across India)
 - Similarly, vide another notification on 27.11.2024, the CBIC has notified 40 more SCNs from across the country (along with the name and address of the taxpayer and SCNs details issued by DGGI) which shall now be adjudicated by Joint/ Additional Commissioner of CGST & C. Ex., Thane

Notification nos. 27/2024 - Central Tax dated 25.11.2024 & 28/2024 - Central Tax dated 27.11.2024

II. Portal updates

- **Biometric-Based Aadhaar Authentication and Document Verification for Madhya Pradesh:**
 - Certain taxpayers in the Madhya Pradesh, identified through data analysis and risk parameters, will be required to undergo Biometric-Based Aadhaar Authentication, including photograph capture and verification of original documents at the time of applying for fresh GST registrations. This process is managed by the GSTN and involves the following steps:
 - a. The applicant will receive a link for either OTP-based Aadhaar Authentication or for booking an appointment. The message will include details of the designated GST



Suvidha Kendra (GSK) and jurisdiction for Biometric-Based Aadhaar Authentication and document verification.

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

The said GSTN advisory dated 27.11.2024 can be accessed by clicking on the link [here](#).

• **Advisory for GST Amnesty Scheme**

- The GSTN portal has intimated that the Forms GST SPL-01 and GST SPL-02 (as notified for the amnesty scheme) are under development which will be made available on the common portal tentatively from the first week of January 2025.
- In the meantime, taxpayers (looking to avail the amnesty scheme) are advised to pay the demanded tax amount through the “payment towards demand” facility in case of demand orders and through Form GST DRC-03 in case of notices. However, if payment has already been done through Form GST DRC-03 for any demand order then taxpayer is advised to file Form GST DRC-03A to link the said payment of tax in Form GST DRC 03 with such demand order.

The said GSTN advisory dated 08.11.2024 can be accessed by clicking on the link [here](#).

• **Advisory regarding IMS implementation**

- The GSTN portal has taken cognizance of the auto-population issue caused by the implementation of IMS.
- The GST portal has issued an advisory which states that IMS is an optional facility currently and during this initial phase of the implementation, if incorrect details of ITC/ liability are auto-populated in GSTR-3B on the portal, then the taxpayers may edit such wrongly populated ITC/ liability in their GSTR-3B, to correctly avail ITC or pay correct tax liability based on the factual position as per the documents/ records available with them.

The said GSTN advisory dated 12.11.2024 can be accessed by clicking on the link [here](#).

• **Advisory for fresh GST registration applications in “Other territory”**

- In accordance with Notification No. 2/2017 - Central Tax (dated 19.06.2017) read with Trade Notice 01/2017 - Central Tax (Mumbai Zone) dated 21.06.2017 and GST Trade Notice No. 002/2017 (Chennai) dated 20.06.2017, the GSTN portal has advised the taxpayers option for fresh GST registrations in “Other territory” to select the Centre jurisdiction as per table below:



Region	Centre Jurisdiction to opt
The continental shelf and exclusive economic zone contiguous to the western coast of India adjacent to States/ Union Territories of Gujarat, Maharashtra, Goa, Daman and Diu, Karnataka, Kerala and Lakshadweep	Commissionerate: Mumbai South Division: Division I Range: Range I/ II/ III/ IV/ V (based on starting alphabet of the name of taxpayer)
The continental shelf and exclusive economic zone contiguous to the eastern coast of India adjacent to States/ Union Territories of West Bengal, Odisha, Andhra Pradesh, Puducherry, Tamil Nadu and Andaman and Nicobar Islands.	Commissionerate: Chennai North Division: Any division displayed in the dropdown. Range: Any range corresponding to selected division which appear in the dropdown

The said GSTN advisory dated 07.11.2024 can be accessed by clicking on the link [here](#).

- **Advisory regarding E-invoice verification through notified Apps**

- The GSTN portal has intimated a list of 5 developers and their apps which are authorized for E-invoice verification. The same has been tabulated below for your reference:

SN	Name of the Developer	Name of the App	Available online on:
1.	GSTN	e-Services App	Google Play and Apple App Store
2.	NIC (IRP 1 & 2)	QR Code Verify App	Google Play and Apple App Store
3.	CYGNET (IRP 3)	IRP App	Google Play
4.	EY (IRP 4)	Invoice Registration Portal	Google Play and Apple App Store
5.	iRIS (IRP 5)	Peridot	Google Play and Apple App Store

The said GSTN advisory dated 27.11.2024 can be accessed by clicking on the link [here](#).



B. Recent Decision from the Judiciary:

Category: Due Date of filing of appeal in case of rectification of Original Order

1. M/s. SPK and Company vs. State Tax Officer [2024-TIOL-2036-HC-MAD-GST]

Background facts:

The petitioner had replied to the SCN issued by the Department and subsequently an order was also passed by the proper officer. Thereafter the petitioner had also filed the present writ petition against the SCN and the Order and simultaneously filed rectification application against the Order as well.

Key Issue Raised:

- Can the High Court be moved in the present case against the said SCN (vague and incomplete) and the Order (on merits)?
- What would be last day to file appeal against the Order where rectification order was issued?

Gist of the Decisions:

The HC disposed of the Writ petition on the grounds that SCN cannot be challenged because the petitioner had already acted upon the same by filing a detailed reply. W.r.t the Order, the HC commented that they cannot decide on merits since alternate remedy is available.

W.r.t. filing appeal against the Order (before appellate authority), the HC categorically held that the period of limitation would begin from the date of rectification order, even where no rectification was made to the original order/ rectification application was dismissed.

SBGCO comments:

The above case highlights that writ petitions are double edged swords and not every time the HC may favour the taxpayer. Specifically, when the taxpayer has acted upon a SCN, the HC cannot act against the SCN, even on principles of natural justice. Similarly, on merits, the HC cannot take up, unless alternate remedy is not available.

W.r.t. time limit for filing of an appeal, the representative for the petitioner did touch upon the fact that the rectified order gets merged with the original order (*Doctrine of Merger*). However, the High Court still noted that period of limitation to file an appeal shall begin from date of rectified order only and not the original order. Hence, this should be a welcome relief for many taxpayers who tried to obtain rectification order within the window of 3 months from date of order and also tried to file the appeal thereafter, against such rectified order, within the same window of 3 months from date of original order.

Category: Demand based on ITR/ 26AS vs ST-3

2. Nimeshbhai Gunvantbhai Patel vs Union of India [2024-TIOL-2018-HC-AHM-ST]

Background facts:

SCN issued for FY 2015-16 and FY 2016-17 by the Department after considering the data received from the Income Tax Department, wherein the difference between "Income Earned" and "Value of Services" was determined as amount "exigible" to Service Tax and petitioner was also made liable to Service Tax Registration relying on the Form-26AS which is a Statement of Tax Deducted at Source issued under the provisions of Income Tax Act, 1961.



Key Issue Raised:

Whether demand can be confirmed on the basis of data provided by the Income Tax Department in Form-26AS?

Gist of the Decisions:

The Hon'ble HC noted that there must proper justification for issuing SCN by invoking extended period of limitation other than data provided by Income Tax Authorities. Further, the petitioner had submitted reconciliation and also explained why their activity was not liable to Service Tax. However, the adjudication order did not consider the submission and proceeded to confirm the order based on the SCN. The Hon'ble HC also noted that the activity of the petitioner was exempted vide entry 12A of the Exemption notification No. 25/2012 - ST. Hence, even on that ground, the HC set aside the order confirming the demand.

SBGCO comments:

The above case re-iterates the importance of detailed drafting of a SCN, which is the starting cornerstone of any litigation. The Department must meticulously state the reason for issuing the notice and also give valid reasons for invoking extended period of limitation. Merely data received from Income Tax department cannot be treated as a valid reason for issuance of notice with extended period of limitation.

Category: Availment of ITC in the wrong head

3. Rejimon Padickapparambil Alex vs. Union of India [2024-TIOL-2024-HC-KERALA-GST]

Background facts:

The petitioner inadvertently claimed CGST and SGST in GSTR 3B, instead of IGST charged in the invoices during the period July 2017 to March 2018. The IGST amounts claimed are duly reflected in the Form GSTR 2A updated on the common GST portal. However, on account of availment under the wrong head, there was an apparent excess claim under CGST and SGST and short claim under IGST.

Key Issue Raised:

Whether demand can be confirmed by the proper officer in such cases where CGST/ SGST is inadvertently claimed instead of IGST and vice-versa?

Gist of the Decisions:

The Hon'ble High Court observed that claiming credit in the wrong head cannot be treated as wrong availment of credit. The present case does not warrant issuance of SCN u/s 73 because there is no wrong availment of credit, but only an inadvertent mistake committed by the appellant in claiming ITC under the wrong head. The details of the said invoice were duly appearing in Form GSTR 2A as uploaded by the supplier.

Hence, the Hon'ble HC set aside the impugned Order and also requested the aggrieved state (Kerala, in this state) to submit the copy of this judgement along with a representation before the GST Council to issue guidelines/ instructions/ directions to resolve the issue regarding availment of ITC under the wrong head.



SBGCO comments:

The Hon'ble HC adopted a pragmatic view in ensuring that taxpayer is not put through undue hardship for an inadvertent mistake which was revenue neutral (i.e., no loss to exchequer). This judgement could help various taxpayers who have committed such inadvertent errors. Hopefully, the GST council takes cognizance of this judgement and issues guidelines/ instructions/ directions at the earliest.

Category: Inaction from Department

4. STIC Travels Pvt Ltd vs. Union of India [2024-TIOL-1955-HC-DEL-ST]

Background facts:

The petitioner received a notice dated 21.08.2023 from department for re-initiating the adjudication proceedings in respect of the SCN dated 24.10.2008. The period covered under the SCN was from 01.07.2003 up to 31.03.2008. After personal hearing in 2009, the SCN was transferred to call book in the year 2015. Another personal hearing was granted in 2019, which was duly attended by the petitioner. Thereafter, there was no action from the Department until issuance of the aforesaid mentioned notice in August 2023.

Issue Raised:

Whether the proceedings are now barred by limitation?

Gist of the Decision:

The Hon'ble High Court of Delhi observed that the SCN was not adjudicated within a reasonable period of time. Further, more than 14 years elapsed since issuance of the SCN. The HC also noted that a part of the demand sought to be raised pertained to a period more than twenty years prior to date of the present notice in August 2023.

Hence, placing reliance on decisions of Hon'ble HC of Delhi (2023-TIOL-455-HC-DEL-ST & 2020-TIOL-1787-HC-DEL-ST), the HC of Delhi set aside the notice dated 21.08.2023 and restrained the department from proceeding with the initial impugned SCN dated 24.10.2008.

5. Esjaypee Impex Pvt Ltd vs. Union of India [2024-TIOL-1997-HC-MUM-CUS]

Background facts:

An SCN was issued to the petitioner in September 2003 and the same was adjudicated by the proper officer. The said issue travelled up to the Tribunal in 2008 wherein, the Tribunal set aside the Order on the ground of violation of principles of natural justice and directed the adjudicating authority to pass a fresh order within a period of 6 months from the date of receipt such order after granting an opportunity of personal hearing to the petitioners.

However, no personal hearing was granted that time and no order was passed in accordance with the instruction of the Tribunal. Thereafter, a notice for personal hearing in May 2024 was issued to the petitioner for adjudication of the original SCN.



Key Issue Raised:

Whether the department can adjudicate the said SCN after such an inordinate delay?

Gist of the Decisions:

The Hon'ble High Court of Bombay noted that the reason of Covid-19 pandemic given by the Department for the delayed adjudication are unjustifiable. The HC also held that Petitioners cannot be made to suffer for all this lethargy and callousness on the part of the Revenue. If the SCN is kept hanging over the Petitioners for over 21 years, it would make it impossible for the Petitioners to plan their business or make provisions for any contingent liabilities. Such inordinate delay/delayed adjudication was held to be in contravention of procedural fairness. Hence, the HC had no objection to set aside the original SCN and the notice for personal hearing granted to the petitioners and restrained the Department from taking any action against the petitioner in the said matter.

SBGCO comments for 4 and 5 above:

As a noticee, taxpayers must always be vigilant and aware of their rights and duties in the course of the adjudication process. Taxpayer must ensure they submit their replies, attend Personal hearings when scheduled and ensure all the submissions are acknowledged by the Department. W.r.t. delays by Department, the above decisions show that sometimes, it is better to let time fly by, when there is no proactiveness from the Department's side in adjudicating SCNs. Any litigation, to be effective, should be completed in a time-bound manner. Department cannot sleep over notices for years, without any plausible reasons.



C. Recent Decision from Advance Authority

1. In re: Bamapada Jana [Order No. 14/WBAAR/2024-25 (West Bengal) = 2024-VIL-181-AAR]

Background facts:

The Applicant has been awarded with the work of supplying inpatients diets to the Central Hospital and accordingly has entered into a contract with the South Eastern Railway. The contract provides for running of catering service from in-house kitchen of the Hospital. The applicant is required to invoice a monthly bill to South Eastern Railway at its registered office within 10th day of the next month.

Questions raised:

Whether the supply of food to all the inpatients would be considered as 'exempted supply' under Notification No. 12/2017 read with Sec. 8(a) of the GST Act??

Gist of the Ruling:

The AAR studied the scope of contract awarded by South Eastern Railway and also analysed the exemption entry no 74 of the Notification No 12/2017 CT (R) read with Circular No No.32/06/2018 - GST dated 12.02.2018.

The AAR concluded that the exemption of health-care services (composite services including in-house diet plan provided by medical practitioners/ doctors) is available only to a clinical establishment i.e., Hospital. The services of the applicant are provided to the Hospital, who in-turn provide it to the patients. Since the applicant cannot be said to be a clinical establishment and they are providing the services to the hospital (and not the patients - based on contract awarded), the applicant cannot avail the exemption in terms of entry number 74 of the Notification No 12/2017 CT (R) dated 28.06.2017.

SBGCO comments:

While analysing any exemption entry, it is important to analyse whether the said exemption is available for the activity per se (activity centric) or for a particular service provider (service provider centric). If the exemption is activity centric, then irrespective who is the service provider, the exemption shall be available. However, if the exemption is service provider centric, then exemption shall be available only to those set of service providers.

The above decision by the AAR is a well-reasoned order. The AAR has scrutinized the scope of work of the contract presented before them, analysed the conditions for availing the exemption and then reached the conclusion regarding eligibility of the exemption in the hands of the applicant.



D. GST Compliance chart for December 2024

S N	Due Date	Form	Period	Periodicity	Special Remarks
1.	10.12.2024	GSTR - 7	Nov 2024	Monthly	To be filed by those who are required to deduct TDS under GST
2.	10.12.2024	GSTR - 8	Nov 2024	Monthly	To be filed by those who are required to collect TCS under GST
3.	11.12.2024	GSTR - 1	Nov 2024	Monthly	Taxpayers filing GSTR - 1 monthly
4.	13.12.2024	GSTR - 6	Nov 2024	Monthly	To be filed by an ISD
5.	13.12.2024	IFF	Nov 2024	Monthly	To be filed by those under QRMP Scheme (Optional)
6.	13.12.2024	GSTR - 5	Nov 2024	Monthly	To be filed by a non-resident foreign taxpayer registered in GST
7.	20.12.2024	GSTR - 3B	Nov 2024	Monthly	To be filed by Taxpayer filing monthly GSTR 3B
8.	20.12.2024	GSTR - 5A	Nov 2024	Monthly	To be filed by non-resident Online Information and Database Access or Retrieval (OIDAR) services provider
9.	25.12.2024	PMT - 06	Nov 2024	Monthly	Challan to be filed for payment by those under QRMP Scheme
10.	31.12.2024	GSTR 9	FY 2023-24	Annual	To be filed by Taxpayer having aggregate annual T/o > 2 crore
11.	31.12.2024	GSTR 9C	FY 2023-24	Annual	To be filed by Taxpayer having aggregate annual T/o > 5 crore



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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