



THE GST BULLETIN

YOUR INDIRECT TAX KNOWLEDGE PARTNER

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About The GST Bulletin

The GST Bulletin is a Weekly Newsletter from Team CGA Legal, a leading Indirect Tax Consultancy firm. The Newsletter is intending to keep its readers updated with all important legal and judicial updates in Goods & Services Tax and other Indirect Tax laws. The Newsletter also has a special column of GST Compliance Calendar for the month. Along with it, CGA Legal also sends various legal recommendations which have immense implications in improving the compliance of GST in your business.

All editions of our newsletters can be referred from below link below;
<https://www.cgalegal.co.in/home/newsletters.php>

Other Offerings from Team CGA Legal

- **CGA Legal GST Compliance Calendar:** Our Monthly Calendar detailing all GST related compliances for the month so that you never miss of any of the compliances.
- **CGA Legal Meet:** Our Monthly Webinar series discussing various trending GST legal and compliance issues

All the previous editions can be accessed on our website
www.cgalegal.co.in

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GST Compliance Calendar - December 2022

Date	Types of Return	Period	Types of Taxpayer
10-12-2022	GSTR-7	November 2022	TDS Deductor
10-12-2022	GSTR-8	November 2022	E-Commerce Operator
11-12-2022	GSTR-1	November 2022	Turnover more than INR 5 crore in the preceding FY or Turnover up to INR 5 crores and opted for monthly return filing
13-12-2022	Details of Outward Supplies through Invoice Furnishing Facility [IFF]	November 2022	Taxpayers who are under QRMP Scheme
13-12-2022	GSTR-6	November 2022	ISD
13-12-2022	GSTR-5	November 2022	Non Resident Taxable Person
20-12-2022	GSTR-3B	November 2022	Turnover more than INR 5 crore in the preceding FY or Turnover upto INR 5 crore in the preceding FY but opted for monthly return filing
20-12-2022	GSTR-5A	November 2022	OIDAR
25-12-2022	GST PMT-06	November 2022	Taxpayer who has opted for QRMP Scheme has to deposit tax using form GST PMT-06 by the 25th of the following month, for the first and second months of the quarter.
31-12-2022	GSTR-9	FY 2022-23	Annual Return to be filed by registered persons with Agg Turn > INR 2Cr
31-12-2022	GSTR-9C	FY 2022-23	Reconciliation statement to be filed by registered person with Agg Turn > INR 5Cr

GST Updates – CBIC Notification

Ntf. No.	Summary of Notifications
<p>23/2022 – CT Dated 23.11.2022</p>	<p>CBIC empowers Competition Commission of India to decide Anti-Profitteering Issues under GST w.e.f. 01-12-2022</p> <ul style="list-style-type: none"> • CBIC has empowered Competition Commission of India established under section 7(1) of the Competition Act, 2002, to examine whether input tax credits availed by any registered person or the reduction in the tax rate have actually resulted in a commensurate reduction in the price of the goods or services or both supplied by him.
<p>24/2022 – CT Dated 23.11.2022</p>	<p>Consequential amendment in CGST Rules, 2017 vide the Constitutional changes in provisions relating to Anti-Profitteering</p> <ul style="list-style-type: none"> • Vide Notification No. 24/2022-Central Tax dated 23-11-2022, certain omission and changes have been made in CGST Rules, 2017 which earlier provided the provisions relating to Constitution of Authority, Appointment, salary, allowances and other terms and conditions of service of the Chairman and Members of the Authority etc.

GST Updates – CBIC Instruction

Manner of processing and sanction of IGST refunds, withheld in terms of clause (c) of sub-rule (4) of rule 96, transmitted to the jurisdictional GST authorities under sub-rule (5A) of rule 96 of the CGST Rules, 2017

Instruction No. 04/2022 Dated 28-11-2022

The CBIC GST Policy Wing has issued Instruction No. 04/2022-GST dated November 28, 2022 regarding the manner of processing and sanction of IGST refunds in case of risky exporters.

- Erstwhile SOPs provided that DGARM would identify the exporters and their suppliers based on risk parameters, approved by the Competent Authority and would forward the list of such exporters to the Risk Management Centre for Customs (RMCC) for putting an alert in the system. In such cases, the Customs field formations were required to conduct a detailed examination of the export goods of such identified exporters.
- Further, the jurisdictional CGST formations were required to verify such identified exporters and their suppliers and forward the verification report to DGARM. On receipt of the verification report from CGST formations, DGARM was required to take a decision for issuance of NOC or otherwise.

This SOP was loathed with inefficiencies and delays. Thereby Rule 96 has been amended retrospectively from July 01, 2017 which paved the way for a new SOP on the risky exporters.

New SOP

- DGARM based on data analysis and risk parameters, would identify the exporters where verification of credentials of the exporter, including the availment of ITC by the exporter, is considered essential before the grant of refund.

GST Updates – CBIC Instruction

.....Continued from above

- DGARM would then place an all-India alert on such an exporter.
- Once an alert is placed on an exporter, the IGST refunds of such exporters would be withheld. Data in respect of Shipping Bills filed by such exporter, would be transmitted to GSTN through ICEGATE for the generation of refund claims in FORM GST RFD-01.
- Such refund claims, together with the risk parameters will be made available to the jurisdictional officer.
- On receipt of such refunds, the jurisdictional officer shall immediately process such refund claims in a manner similar to other RFD-01 refunds. However, it may be noted that as these refund claims have been generated by the system on the basis of Shipping Bills/ Bills of Export filed by the exporter, these claims would be auto-acknowledged by the system, and no Deficiency Memo in Form GST RFD-03 can be issued against such system generated Form GST RFD-01 refund claims.
- The proper officer shall ascertain the genuineness of the exporter & verify the correctness of availment and utilisation of ITC by the exporter, and exercise due diligence. The proper officer may conduct the physical verification of places of business of the exporter, if required, to ensure that the exporter exists at his declared place of business and is functional/active.
- The proper officer shall pass a detailed speaking order in respect of the refund claim and shall duly upload the same along with the refund sanction order in Form GST RFD-06 on the portal.
- GSTN shall transmit the data regarding the outcome of processing of refund by the proper officer and the feedback received from the proper officer on the requirement of removal or continuation of alert, to DGARM for necessary action for removal or continuation of alert.

GST News

GST collections now averaging Rs 1.49 lakh crore on monthly basis: Revenue Secy Tarun Bajaj

Dated 30-11-2022

India's monthly goods and services tax (GST) collections are now averaging Rs 1.49 lakh crore, said revenue Secretary Tarun Bajaj on November 29.

In an exclusive interview with CNBC TV-18, Bajaj discussed the government's fiscal math, preparation for the upcoming Budget 2023-2024, and more.

Speaking on the government's GST revenue, Bajaj added that close to about Rs 1.50 lakh crore GST collections on a monthly basis should be the run rate in the coming months. However, he also put a caveat saying GST will vary based on the months. "It may not be so high in June, July but it will be high in the months of October and November, which are festival months," he said.

Read more:

<https://www.moneycontrol.com/news/business/economy/gst-collections-now-averaging-rs-1-49-lakh-crore-on-monthly-basis-revenue-secy-tarun-bajaj-9621941.html>

GST – Judicial Precedents

1. Input Tax Credit

GST on amount recovered from employees towards canteen services and admissibility of ITC on the GST charged by the Canteen Contractor

M/s. Tube Investment of India Limited [AAR Uttarakhand]

Held: It has been established that the supply of food in the canteens are 'Supply of Service' by the applicant. The third party vendor has entered into agreement with the applicant for running of canteen in their unit and is paid service charges which is a supply made by the third-party-vendor to the applicant. The supply of food by the employer, i.e. the applicant to their employees is composite supply of food held as 'Supply of service' as per Schedule-II of the GST Act and the amount collected by the applicant is a 'Consideration' on which GST is liable to be paid.

With regard to the eligibility of ITC on the GST paid by the applicant on the services of canteen services by the canteen service provider, we observe that the ITC on GST paid on Canteen Facility is barred credit u/s 17(5)(b)(i) of the CGST Act, 2017 and hence inadmissible. We observe that two clauses in Section 17(5)(b)(i) and 17(5)(b)(iii) of the CGST Act, which governs the supply of goods and services, are not related by the punctuation used at the end of the provisions. "Colons and semicolons are two types of punctuation," according to the concept, and "Semicolons are used to unite two independent clauses/sub clauses, or two complete thoughts that might stand alone as entire sentences." Hence it can be said that ITC is not allowed on canteen charges even though it is obligatory under any other law.

CGA Comments: Contradictory view has been taken in case of *M/s Troikaa Pharmaceuticals Limited* [Gujarat Authority for Advance Ruling Authority] and *Bhimas Hotels (P.) Ltd. v. Union of India* [Andhra Pradesh High Court]. On the other hand, vide *CBIC Circular No. 172/04/2022-GST* it has been clarified that perquisites provided by the employer to the employee in terms of contractual agreement entered into between the employer and the employee, will not be subjected to GST when the same are provided in terms of the contract between the employer and employee.

GST – Judicial Precedents

2. Audit

Issuance of draft audit report and final audit report on the same date is against the Principal of Natural Justice

M/s. Simon India Ltd. Versus CT and GST Officer, Cuttack [Orissa High Court]

Facts: The Revenue issued both draft and final audit report on the same date and beyond timelines provided in Section 65 of CGST Act, 2017. Further, the Petitioner was not given an opportunity to reply to draft audit report.

Learned Senior Advocate for the Petitioner, draws attention to Rule 101(4) of the OGST Rules, 2017 which reads as under:

The proper officer may inform the registered person of the discrepancies noticed, if any, as observed in the audit and the said person may file his reply and the proper officer shall finalise the findings of the audit after due consideration of the reply furnished.”.

Held: On a plain reading of Section 65(4) together with Section 65(6) of the OGST Act and Rule 101(4) of the OGST Rules, it is plain that the procedural requirement of the Petitioner having to be given 30 days’ time to file a reply to the draft audit report was not followed in the present case. On that short ground, this Court sets aside the final audit report dated 30th June, 2022 issued under Section 65(6) of the OGST Act.

GST – Judicial Precedents

3. Registration

Cancellation of GST Registration due to non availability of taxpayer at registered address

Bimal Kothari Vs Assistant Commissioner (DSGST) [Delhi High Court]

Facts: Revenue conducted physical verification under Rule 25 of CGST Rules, 2017 without issuing notice to the Petitioner and without uploading the verification report on the GST Portal, Revenue cancelled the GST registration of the Petitioner.

Held: Rule 25 provides that where a proper officer is satisfied that physical verification of the place of business of a person is required due to failure of Aadhaar authentication, before the grant of registration or due to any other reason after the grant of registration, such physical verification of the place of business, if deemed necessary, is to be carried out in the presence of the said person. As is evident, in the instant case, the concerned officer deemed it necessary to carry out physical verification of the petitioner's place of business before proceeding to pass the impugned order, which resulted in, as noticed above, in the cancellation of the petitioner's registration.

Concededly, no notice was issued to the petitioner requiring, as mandated by Rule 25, his presence at the time of verification - the impugned order cancelling the petitioner's GST registration cannot be sustained.

The petitioner's GST registration shall stand restored - petition allowed.

GST – Judicial Precedents

4. Refund

Whether services provided by BPO would qualify as intermediary services?

Genpact India Pvt. Ltd. Versus Union of India And Others [Punjab and Haryana High Court]

Facts: The Petitioner providing BPO services to overseas customers and claimed refund of unutilized ITC on such export of services. Adjudicating Authority allowed the refund. However, the Principal Commissioner of Central GST Gurugram exercising the powers conferred under Section 107 (2) of the CGST Act, reviewed the proceedings and passed an order dated 13.09.2019 reviewing the order in original dated 14.03.2019 and by recording that the services provided by the petitioner are in the nature of intermediary services and do not qualify as export of services in terms of Section 2 (6) of the IGST Act.

Held: A bare perusal of the recitals and relevant clauses of the MSA do not in any manner indicate that petitioner is acting as an “intermediary” so as to fall within the scope and ambit of the definition of “intermediary” under Section 2 (13) of the IGST Act. Such clauses cannot also be interpreted to conclude that the petitioner has facilitated the services. The said clauses are in relation to the modalities of how the actual work would be carried out and do not in any manner establish that the petitioner was required to arrange/facilitate a 3rd party to render the main service which has actually been rendered by the petitioner.

The impugned order dated 15.02.2021 (Annexure P-18) holding the petitioner to be an “intermediary” under Section 2 (13) of the IGST Act, cannot sustain - Petition allowed.



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