



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 – February 2023

Statutory Due Date	Type of Return/Form	Period	Type of Taxpayer
10-02-2023	GSTR-7	January 2023	TDS Deductor
10-02-2023	GSTR-8	January 2023	E-Commerce Operator
11-02-2023	GSTR-1	January 2023	Turnover more than INR 5 crore in the preceding FY or Turnover up to INR 5 crores and opted for monthly return filing
13-02-2023	Details of Outward Supplies through Invoice Furnishing Facility [IFF]	January 2023	Taxpayers who are under QRMP Scheme
13-02-2022	GSTR-5	January 2023	Non Resident Taxable Person
13-02-2022	GSTR-6	January 2023	ISD
20-02-2022	GSTR-3B	January 2023	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
20-02-2022	GSTR-5A	January 2023	OIDAR
25-02-2022	GST PMT -06	January 2023	Taxpayers 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

Analysis of GST Updates on Union Budget 2023-24

- 1. Changes in Composition :** In order to implement 48th GSTC recommendation, Section 10 of CGST Act governing eligibility conditions for opting for Composition scheme under GST has been amended to allow the composition dealer to supply goods through electronic commerce operators. The clause (d) of sub-section (2) and Clause (c) of sub-section (2A) in section 10 of the CGST Act is being amended so as to remove the above restriction.
- 2. Proportionate reversal of ITC in case of Non-payment to Supplier :** As per second proviso to Section 16, in case the recipient has not made the payment to the supplier within 180 days from the date of issue of Invoice, the ITC availed was added to the output tax liability. The Second and third provisos to sub-section (2) of section 16 have been amended by substituting the same and now the recipient will be required to reverse the ITC to the extent of non-payment along with interest as per Section 50.
- 3. Proportionate availment of ITC:** Explanation to sub-section (3) of section 17 of the CGST Act is being amended so as to restrict availment of input tax credit in respect of certain transactions specified in para 8 of Schedule III of the CGST Act i.e. supply of warehoused goods to any person before clearance for home consumption, by including the value of such transactions in the value of exempt supply
- 4. No ITC on CSR Activities :** Sec 17(5) has been amended so that no ITC available on in respect of goods or services or both received by a taxable person, which are used or intended to be used for activities relating to his obligations under corporate social responsibility referred to in section 135 of the Companies Act, 2013.

Analysis of GST Updates on Union Budget 2023-24

5. **Person exempted from Registration under GST :** Sec 23 of CGST Act has been amended with retrospective effect from 01st July, 2017 so that even if the person is eligible for registration as per Sec 22(1) of CGST Act or under compulsory registration under Sec 24, the person will be exempted from registration if he satisfied the conditions of Sec 23(1) of CGST Act.
6. **Statement / Return cannot be filed beyond 3 years from the due date:** Statement of Outward supplies under Sec 37, Return under Section 39[Regular Registered person/ Composition dealer/ TDS Deductor/ ISD), Annual Return under Section 44, Return by E-Com Operator under Section 52 cannot be filed after the expiry of a period of three years from the due date of furnishing the said details. Further, it also seeks to provide an enabling provision for extension of the said time limit, subject to certain conditions and restrictions, for a registered person or a class of registered persons.
7. **Amendment in Refund provisions :** Sub-section (6) of section 54 of the CGST Act is being amended to remove the reference to the provisionally accepted input tax credit to align the same with the present scheme of availment of self-assessed input tax credit as per sub-section (1) of section 41 of the said Act.
8. **Provision of Penalty for E-Com Operators:** A new sub-section (1B) in section 122 of the CGST Act is being inserted so as to provide for penal provisions applicable to Electronic Commerce Operators in case of contravention of provisions relating to supplies of goods made through them by unregistered persons or allows an inter-State supply of goods or services or both through it by a person who is not eligible to make such inter-State supply or if such e-commerce operator fails to furnish the correct details in the GSTR-8 then such e-commerce operator shall be liable to pay a penalty of ten thousand rupees, or an amount equivalent to the amount of tax involved had such supply been made by a registered person other than a person paying tax under section 10, whichever is higher.

Analysis of GST Updates on Union Budget 2023-24

12. Decriminalization of Certain offences: Sec 132 has been amended so as to decriminalize following offences;

(g) obstructs or prevents any officer in the discharge of his duties under this Act;

(j) tampers with or destroys any material evidence or documents;

(k) fails to supply any information which he is required to supply under this Act or the rules made thereunder or supplies false information;

and to increase the monetary threshold for launching prosecution for the offences under the said Act from 100 lacs to 200 lacs, except for the offences related to issuance of invoices without supply of goods or services or both.

14. Changes in Compounding provisions. Section 138 has been amended to exclude the persons involved in offences relating to issuance of invoices without supply of goods or services or both from the option of compounding of the offences and to reduce the compounding amount from the present range 50 to 150 percent of tax amount to range of 25 to 100 percent.

15. Statutory Nod to Sharing of Information : A new section 158A in the CGST Act is being inserted so as to provide for prescribing manner and conditions for sharing of the information furnished by the registered person in his return or in his application of registration or in his statement of outward supplies, or the details uploaded by him for generation of electronic invoice or E-way bill or any other details, as may be prescribed, on the common portal with such other systems, as may be notified.

Analysis of GST Updates on Union Budget 2023-24

16. Amendment in Schedule III to Section 7 of CGST Act: The schedule is amended with retrospective effect so that entries 7 [Supply of goods from a place in the non-taxable territory to another place in the non-taxable territory without such goods entering into India], 8(a) [Supply of warehoused goods to any person before clearance for home consumption] and 8(b) [Supply of goods by the consignee to any other person, by endorsement of documents of title to the goods, after the goods have been dispatched from the port of origin located outside India but before clearance for home consumption] will not be treated as supply of goods or services from 01-07-2017.

Such entries in Schedule III had been inserted vide CGST (Amendment) Act 2018 w.e.f. 01-02-2019. However, vide Finance Bill, 2023, such entries has been made applicable w.e.f. 01-07-2017. However, it is also being clarified that where the tax has already been paid in respect of such transactions/ activities during the period from 01st July, 2017 to 31st January, 2019, no refund of such tax paid shall be available.

16. Changes in definition of 'non-taxable online recipient'

Definition	Non Taxable Online Recipient
Old	"Non-taxable online recipient" means any Government, local authority, governmental authority, an individual or any other person not registered and receiving online information and database access or retrieval services in relation to any purpose other than commerce, industry or any other business or profession, located in taxable territory.
New	"Non-taxable online recipient" means any unregistered person receiving online information and database access or retrieval services located in taxable territory. Explanation.—For the purposes of this clause, the expression "unregistered person" includes a person registered solely in terms of clause (vi) of section 24 of the Central Goods and Services Tax Act, 2017

The amendment has provided for taxability of OIDAR service provided by any person located in non-taxable territory to any unregistered person receiving the said services and located in the taxable territory.

Analysis of GST Updates on Union Budget 2023-24

16. Changes in definition of ‘online information and database access or retrieval services.’

Definition	Non Taxable Online Recipient
Old	<p>“Online information and database access or retrieval services” means services whose delivery is mediated by information technology over the internet or an electronic network and the nature of which renders their supply essentially automated and involving minimal human intervention and impossible to ensure in the absence of information technology and includes electronic services such as,—</p> <p>(i) advertising on the internet;</p> <p>(ii) providing cloud services;</p> <p>(iii) provision of e-books, movie, music, software and other intangibles through telecommunication networks or internet;</p> <p>(iv) providing data or information, retrievable or otherwise, to any person in electronic form through a computer network;</p> <p>(v) online supplies of digital content (movies, television shows, music and the like);</p> <p>(vi) digital data storage; and</p> <p>(vii) online gaming;</p>
New	<p>“Online information and database access or retrieval services” means services whose delivery is mediated by information technology over the internet or an electronic network and the nature of which renders their supply impossible to ensure in the absence of information technology and includes electronic services such as,—</p> <p>(i) to (vii) - same as above.</p>

The above definition has been amended to remove the condition of rendering of the said supply as essentially automated and involves minimal human intervention. Thus, even if the services are provided by way of Information Technology and the services are not essentially automated and it also includes the human intervention, the such services shall be qualified as OIDAR Services.

Analysis of GST Updates on Union Budget 2023-24

- 17. Omission of Proviso to Sec 12(8) of IGST Act:** The place of supply of services by way of transportation of goods, including by mail or courier in case where the transportation of goods is to a place outside India, shall be the place of destination of such goods. This proviso to Section 12(8) has been omitted as the issue in this case was whether the recipient of services can claim ITC on tax paid on such services since the POS was not the state in which the recipient is registered but it was Foreign Country. Now the POS in case of transportation of goods shall be decided irrespective of the destination of goods.
- 18. Manner prescribed for computing Interest on delayed refunds:** Section 56 of the CGST Act is being amended so as to provide for an enabling provision to prescribe manner of computation of period of delay beyond 60 days from the date of receipt of application till date of refund, for calculation of interest on delayed refunds.

GST News

Contractor arrested by GST department in ₹15 crore ITC fraud

Dated 07-02-2023

The Maharashtra Goods & Services Tax (GST) department on Saturday arrested a contractor for availing input tax credit (ITC) by allegedly using fake invoices amounting to ₹87.08 crore.

According to the GST department, an investigation was conducted in the case of Dhanalaxmi Electrical (Belapur) under a special operation carried out against tax evading firms.

Read more:

<https://www.freepressjournal.in/mumbai/maharashtra-contractor-arrested-by-gst-department-in-15-crore-itc-fraud>

GST Council meeting delayed; likely to be held Feb-end

Dated 07-02-2023

The 49th GST Council, chaired by Union Finance Minister Nirmala Sitharaman and comprising of state counterparts, is expected to be rescheduled, with the meeting likely to be held by the month end.

"The meeting is likely to be rescheduled due to the busy schedule of all stakeholders involved," a government official said.

Read more:

<https://www.businesstoday.in/personal-finance/news/story/exclusive-gst-council-meeting-delayed-369353-2023-02-07>

GST – Judicial Precedents

1. Demand and Recovery

Issuance of mere summary of show cause notice and order is not enough for the purpose of compliance of Rule 142(1)(a) of CGST Rules

M/s. Sidhi Vinayak Enterprises Versus State of Jharkhand [Jharkhand High Court]

Facts: Pursuant to the search conducted by the respondents in the premises of the petitioner-company under Section 67 of the JGST Act, two summary of show cause notice in Form DRC-01 were issued, for two different periods, under Section 74(1) of the JGST Act. It further transpires that the petitioner had been issued two separate orders in Form DRC-07, both dated 14.05.2019.

Petitioners have assailed the summary of the show cause notice and the summary of the order on the ground that they are in teeth of the provisions of Section 74 of the JGST Act. Summary of the show cause notice in Form GST DRC-01 is not a substitute of the proper show cause notice. Petitioners contend that principles of natural justice have been violated.

Held: Law is no more res-integra, inasmuch as, Rule 142(1)(a) of the JGST Rules provides that the summary of show cause notice in Form DRC-01 should be issued “along with” the show cause notice under Section 74(1). The word “along with” clearly indicates that in a given case show cause notice as well as summary thereof both have to be issued. As per Rule 142(1)(a) of the JGST Rules, the summary of show cause notice has to be issued electronically to keep track of the proceeding initiated against the registered person whereas a show cause notice need not necessarily be issued electronically.

This Court in the case of M/S NKAS Services Pvt. Ltd. vs. State of Jharkhand & Ors., [2021 (10) TMI 880 - JHARKHAND HIGH COURT], has taken note of the said position of law and has categorically held that Summary of Show Cause Notice in Form DRC-01 is not a substitute of show cause notice under Section 74(1).

The matter is remanded to the adjudicating authority to pass a fresh order in accordance with law from the stage of issuance of proper show cause notice under Section 74 (1) of the JGST Act.

GST – Judicial Precedents

2. Detention of Goods and Vehicle

Detention of Goods and Vehicle on account of wrong mention of number of Vehicle in E-way Bill

M/s Varun Beverages Limited Versus State of U.P. [Allahabad High Court]

Facts: The dealer was making a stock transfer from its unit at Gautam Buddha Nagar, Greater Noida depot to a sale depot at Kuberpur, Agra. The goods were being shifted through Truck No. HR-73/6755 which was accompanying delivery challan, e-way bill and bilty on 10.06.2018. The mobile squad on 10.06.2018 intercepted the goods and detained the vehicle in question along with the goods on the premise that in the e-way bill the vehicle number has been mentioned as UP-13T/6755.

Held: As there is no dispute to the fact that it is a case of stock transfer and there is no intention on the part of dealer to evade any tax, the minor discrepancy as to the registration of vehicle in State in the e-way bill would not attract proceedings for penalty under Section 129 and the order passed by the detaining authority as well as first appellate authority cannot be sustained - Moreover, the Department has not placed before the Court any other material so as to bring on record that there was any intention on the part of the dealer to evade tax except the wrong mention of part of registration number of the vehicle in the e-way bill. The vehicle through which the goods were transported and the bilty showed the one and the same number while only there is a minor discrepancy in Part-B of the e-way bill where the description of the vehicle is entered by the dealer.

The orders are unsustainable in the eyes of law and both the orders are hereby set aside - petition allowed.

GST – Judicial Precedents

3. Detention of Goods and Vehicle

Detention of Goods and Vehicle on account of expiry of E-way Bill

Karan Singh versus State of West Bengal [Calcutta High Court]

Facts: In the instant case, the consignment (GSV) transported from Pune, Maharashtra to Malli Bazar, Darjeeling. There was delay of only 41 minutes in delivering the consignment. The petitioner has made out a ground that the destination, Malli Bazar in Darjeeling is situated at a hilly terrain. Therefore, it is obvious that there might be few minutes delay in delivering the consignment - In the instant case, imposition of tax was made by the Adjudicating Authority within 40 minutes from the expiry of E-Way Bill.

Held: Having heard the learned Counsels for the parties and on careful perusal of the materials on record as well as the relevant rules, it is found Rule 138 of the CGST Rule 2017 clearly provides that the validity of the E-Way Bill may be extended within 8 hours from the date of its expiry.

The submissions made by the learned Government Advocate cannot be accepted on the ground that where a statute provides extension of time to a transporter, the Adjudicating Authority before imposition of tax and penalty ought to have communicated to the transporter about his right to extend the period but the Adjudicating Authority failed to perform and the appellate authority failed to consider.

So it is the discretion of the Adjudicating Authority to extend the period of E-Way Bill up to 8 hours from the time of its expiry. The Adjudicating Authority failed to exercise its discretion. On this score, the order passed by the Adjudicating Authority and affirmed by the Appellate Authority are liable to be set aside - petition allowed.

GST – Judicial Precedents

4. Cancellation of Registration

Non-submission of reply to the show cause cannot be a ground for cancellation of the registration.

Jai Bahadur Singh Versus State of U.P. [Allahabad High Court]

Facts: Petitioner is the sole proprietary firm engaged in the business of civil work contract and was registered under GST Act. It appears that the GST return was not filed by the counsel and thereafter a show cause notice dated 19.08.2019 was issued, directing the petitioner to furnish a reply to the notice within seven working days from the date of service of the notice.

The case of the petitioner is that he has not been able to get the show cause notice issued by the respondent and, therefore, he could not submit the reply within the stipulated time and, thus, an order came to be passed on 16.09.2019 whereby registration of the petitioner was cancelled. Against the said order, the petitioner filed an appeal which was dismissed by the appellate authority on the ground of delay.

Held: The present petitioner is also entitled for the benefit of the order passed by this Court in TECHNOSUN INDIA PVT. LTD. LUCKNOW THRU. ITS DIRECTOR AMIT KUMAR GAUTAM VERSUS UNION OF INDIA THRU. PRIN. COMMISSIONER, CENTRAL G.S.T., LKO. U.P. AND 2 OTHERS [2022 (9) TMI 1412 - ALLAHABAD HIGH COURT] - In the said judgment, the Court has held that the impugned order does not assign any reason whatsoever for cancelling registration of the petitioner and is passed only on the ground that reply to the show cause notice is not given. The non-submission of reply to the show cause cannot be a ground for cancellation of the registration.

The present petitioner is also entitled for the same relief. The benefit of the order shall also be made available to the present petitioner.

The order is set aside and the petitioner is permitted to appear before the respondent along with the reply to show cause notice and the certified copy of this order within three weeks from today - Petition allowed.



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