



# THE GST BULLETIN

YOUR INDIRECT TAX PARTNER

November 2022 Issue - I

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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](http://www.cgalegal.co.in)

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## GST Compliance Calendar - November 2022

Statutory Due Date	Types of Return	Period	Types of Taxpayer
10-11-2022	GSTR-7	Oct 2022	TDS Deductor
10-11-2022	GSTR- 8	Oct 2022	E-Commerce Operator
11-11-2022	GSTR-1	Oct 2022	Turnover more than INR 5 crore in the preceding FY or Turnover up to INR 5 crores and opted for monthly return filing
13-11-2022	Details of Outward Supplies through Invoice Furnishing Facility [IFF]	Oct 2022	Taxpayers who are under QRMP Scheme
13-11-2022	GSTR-6	Oct 2022	ISD
13-11-2022	GSTR-5	Oct 2022	Non Resident Taxable Person
20-11-2022	GSTR-3B	Oct 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
20-11-2022	GSTR-5A	Oct 2022	OIDAR
25-11-2022	GST PMT- 06	Oct 2022	Taxpayers opted for QRMP Scheme, having aggregate turnover upto INR 5 Cr for *Category A States
30-11-2022	-	FY 2021-22	Time limit for availing ITC pertaining to FY 2021-22 [Refer NN 18/2022-CT dated 28.09.2022].
30-11-2022	-	FY 2021-22	Time limit for issuance of credit notes for the supplies made during the FY 2021-22 [Refer NN 18/2022-CT dated 28.09.2022].
30-11-2022	-	FY 2021-22	Time limit for making rectification/amendment in GSTR-1, GSTR-3B, GSTR-8 filed during FY 2021-22 [Refer NN 18/2022-CT dated 28.09.2022].

## GST Updates – CBIC Instruction

### **Pre-deposit payment method for cases pertaining to Central Excise and Service Tax**

#### **CBIC-240137/14/2022-SERVICE TAX SECTION-CBEC**

**Date: 28-10-2022**

It has been brought to the notice of the Board that appeals have been rejected by some Commissioner (Appeals) for non-compliance of pre-deposit requirements as mandated under section 35F of the Central Excise Act, 1944 (CEA) and Section 83 of the Finance Act, 1994 read with section 35F of the CEA, where such payments have been made through Form GST DRC-03 on common GST portal, by holding that it is not a prescribed method of payment of such pre-deposit.

It may be seen that Form GST DRC -03 is prescribed for payment of tax, interest, penalty under sub-sections (5) and (8) of both sections 73 and 74, and section 129 (1) of the CGST Act, 2017 or any other payment due in accordance with the provisions of the CGST Act, 2017 as specified in rule 142(2) and 142(3) of the CGST Rules, 2017. Further, in GST regime, in connection with appeal mechanism under section 107 of the CGST Act, 2017, Rule 108 (1) of the CGST Rules, 2017 provides Form GST APL-01 for filing an appeal with option of payment of admitted amount and pre-deposit through electronic cash/credit ledger. Thus, under GST Act also, Form GST DRC – 03 is not a prescribed mode for payment of pre-deposit.

It is settled that pre-deposit as a requirement for exercising the right to appeal neither is in the nature of duty nor can be treated as arrears under the existing law and hence cannot be said to be covered under transitional provisions of CGST Act. In view of the same, it is clarified that payments through DRC-03 under CGST regime is not a valid mode of payment for making pre-deposits. under section 35F of the Central Excise Act, 1944 and Section 83 of Finance Act, 1994 read with section 35F of the CEA. There exists a dedicated CBIC-GST Integrated portal, <https://cbic-gst.gov.in> {Board's Circular No. 1070/3/2019-CX dated 24th June, 2019 refers in this regard}, which should only be utilized for making pre-deposits under the Central Excise Act, 1944 and the Finance Act, 1994.

## GST Updates – GST Technical Updates

### **Advisory on Filing TRAN forms for Taxpayers from Daman and Diu & Ladakh**

**Date: 25-10-2022**

Due to reorganization of the state of Jammu & Kashmir and merger of the Union territories of Dadra and Nagar Haveli and Daman and Diu, the taxpayers of Ladakh and earlier 'Daman and Diu' region have been allotted new GSTINs. There is therefore a doubt as to how to file the TRAN-1 and whether it would be linked with the old TRAN-1 or not.

The aggrieved taxpayers of both the above-mentioned regions are hereby informed that they can file or revise their TRAN-1 or TRAN-2 Forms only through their newly allotted GSTINs. Kindly do not use the old GSTIN for filing of TRAN forms.

The respective tax administrations of both the regions are also advised to accordingly facilitate the taxpayers and keep the above information in mind while processing the TRAN claims under the new GSTINs by linking both the old and revised TRAN-1 forms filed by such taxpayers.

## GST Updates – GST Technical Updates

### Advisory on sequential filing of GSTR-1

**Date: 21-10-2022**

### Sequential filing of GSTR-1 & filing of GSTR-1 before GSTR-3B on GST Portal

1. The Central Government has amended Section 37 & Section 39 of Central Goods & Service Tax Act (CGST), 2017 vide Notification No. 18/2022–Central Tax dated 28th September, 2022 with effect from 01 October, 2022. According to section 37(4) of CGST, Act, a taxpayers shall not be allowed to file GSTR-1 if previous GSTR-1 is not filed and as per sec 39(10) a taxpayer shall not be allowed to file GSTR-3B if GSTR-1 for the same tax period is not filed.
2. Section 37(4) & 39(10) of Central Goods & Service Tax Act, 2017 are reproduced below:  
Section 37(4) : A registered person shall not be allowed to furnish the details of outward supplies under sub-section (1) for a tax period, if the details of outward supplies for any of the previous tax periods has not been furnished by him.  
  
Section 39(10) : A registered person shall not be allowed to furnish a return for a tax period if the return for any of the previous tax periods or the details of outward supplies under sub-section (1) of section 37 for the said tax period has not been furnished by him.
3. These changes are being implemented prospectively and will be operational on GST Portal from 1st November, 2022. Accordingly, from October-2022 tax period onwards, the filing of previous period GSTR-1 will be mandatory before filing current period GSTR- 1.
4. Further, from October, 2022 tax period onwards, filing of GSTR-1 will also be mandatory before filing GSTR-3B.

## GST Updates – GST Technical Updates

### Implementation of mandatory mentioning of HSN codes in GSTR-1

**Date: 22-10-2022**

As per Notification No. 78/2020 – Central Tax dated 15th October, 2020, it is mandatory for the taxpayers to report minimum 4 digit or 6 digit of HSN Code in table-12 of GSTR-I on the basis of their Aggregate Annual Turnover (AATO) in the preceding Financial Year. To facilitate the taxpayers, these changes are being implemented in a phase-wise manner on GST Portal.

Part I & Part II of Phase 1 has already been implemented from 01st April 2022 & 01st August 2022 respectively and is currently live on GST Portal. From 01st November, 2022, Phase-2 would be implemented on GST Portal and the taxpayers with up to Rs 5 crore turnover would be required to report 4-digit HSN codes in their GSTR-1.

To view the detailed advisory please :

[https://tutorial.gst.gov.in/downloads/news/hsn\\_table\\_12\\_10\\_22\\_advisory\\_new.pdf](https://tutorial.gst.gov.in/downloads/news/hsn_table_12_10_22_advisory_new.pdf)



## GST News

### **Mandatory GST e-Invoicing For Firms Earning Over 5 Crore From Next Year**

**Date: 16-10-2022**

Starting from January 1, 2023, businesses, with an annual turnover of more than Rs 5 crore, under the Goods and Services Tax, will have to move to e-invoicing. The move is likely to aid the government in identifying false claims and plug revenue leakages. The step is the latest phase in the project to broaden the ambit of this GST framework by the next fiscal year (FY).

According to a report by Economic Times, the GST Network has already asked its technology providers to get the portal ready to handle the increased capacity by the end of this year. The government is also targeting to bring all businesses with turnover above Rs 1 crore under this framework by the next FY.

Read more at:

<https://www.news18.com/news/business/mandatory-gst-e-invoicing-for-firms-earning-over-5-crore-from-next-year-6141073.html>

## GST Webinar

### **CGA Legal GST Webinar – Analysis of changes made effective from 01-10-2022**

**Date: 12-10-2022**

Team CGA Legal organized GST Live Meet on 12<sup>th</sup> of October 2022 on the topic “Analysis of changes made effective from 01-10-2022”.

The link to access the video of the meet is provided below:

<https://cgalegal.co.in/video.php>

Further, the link to access the presentation is also provided below:

[https://cgalegal.co.in/uploaded\\_files/article\\_pdf/article\\_pdf\\_1571238330.pdf](https://cgalegal.co.in/uploaded_files/article_pdf/article_pdf_1571238330.pdf)

## GST – Judicial Precedents

### 1. Classification

#### Classification of Goods - Paratha

##### **M/s. Vadilal Industries Limited [AAAR Gujarat]**

**Facts:** The appellant had raised the following questions seeking advance ruling in the application for Advance Ruling filed by it.

- i. Whether the product viz. 'Paratha' i.e. various varieties of Paratha produced by the applicant merit classification under HSN Code 19059090?
- ii. Whether the product, namely, 'Paratha' i.e. all varieties of Paratha produced by the applicant are chargeable to 5% GST (i.e. 2.5% SGST and 2.5% CGST) under Sl.No. 99A of Schedule-I of Notification No. 01/2017-CT (Rate) and Notification No. 01/2017-IT (Rate) dated 28-6-17?

**Held:** Parathas supplied by the appellant will not fall under the category of Roti or chappati and will not be classified under Chapter heading 1905 as contended by the appellant. The products supplied by the appellant are thus quite different from plain Roti or Chapatti and are therefore, not eligible for the concessional rate of 5% GST (applicable to Plain Chapatti or Roti), provided under Sl.No.99A of Schedule I to Notification No. 1/2017-CT (Rate) dated 28.06.2017 as amended.

Further, the parathas supplied by the appellant will not fall under Chapter heading 1905. The appropriate classification of Parathas would be under Chapter heading 2106 as the subject Parathas require to be cooked before the same can be consumed. The Chapter heading 2106 covers food preparations not elsewhere specified or included and Parathas do not fall under any specific chapter head. Further, as per Rule 3(c) of Rules of Interpretation, when goods cannot be classifiable under Rule 3(a) or 3(b) then they shall be classified under the heading which occurs last in numerical order among those which merit consideration. Thus, among the headings 1905 and 2106, latter occurs last in the numerical order and hence heading 2106 would be more appropriate and right classification of appellant's product, even from this consideration.

The Parathas supplied by the appellant are different from Plain Chapatti or Roti and cannot be treated as covered under the Category of Plain Chapatti or Roti and appropriate classification of Parathas would be under Chapter heading 2106.

## GST – Judicial Precedents

### 2. Supply

Whether the reimbursement of grant by Central Government amounts to supply?

**M/s. Jayshankar Gramin and Adivasi Vikas Sanstha [AAAR Maharashtra]**

**Facts:** The trust renders services under “One stop crises centre” scheme introduced by Ministry of Women and Child Development to destitute women who are litigating divorce, or homeless, or the victims of domestic violence. Central Government gives grants through Women & Child Development Ministry for awarding shelter, food, medical facilities, clothing, etc. to these destitute women who are the victims of domestic violence, or are divorcee, or are homeless, or are the rape victims. The trust represents them before legal forums, including lodging FIR at police stations against the culprits. The trust also arranges for counselling them through expert counsellors to bring them out of the trauma and help them to lead normal life. Since the Appellant was not sure of the GST applicability of the “One Stop Crises Centre”, an application was made with the Authority of Advance Ruling for the GST, Maharashtra (MAAR) for the purpose to ensure if the aforementioned transactions are liable to GST or not.

**Held:** The term “consideration” shall not include any “subsidy” given by the Central Government or State Government. Now, we would like to dissect as to whether the reimbursement amount received by the Appellant from the Women and Child Development Department of the Government of Maharashtra can be construed as subsidy or otherwise - Here, it is seen that the term “subsidy” has not been defined under the CGST Act, 2017 - The term “subsidy”, it is apparent that any money/amount granted by a government to any private person or company for undertaking any charitable activities, which are beneficial to the public, will be construed as subsidy. In the present case, the Appellant are being granted a fixed amount of money from the Government of Maharashtra under the “One stop crises Centre Scheme” for taking overall care of the destitute women who are litigating divorce, or homeless, or the victims of domestic violence. The said activities undertaken by the Appellant are clearly for the welfare of these destitute women, and thereby, serving the mankind in general.

Now, once it has been established that the subject amount reimbursed by the government to the Appellant is in the nature of subsidy, it is concluded that the said reimbursement amount cannot be construed as “consideration” in terms of its definition provided under Section 2(31) of the CGST Act, 2017. which has been reproduced hereinabove.

Further, in absence of any consideration, it is opined that the subject transactions/activities undertaken by the Appellant, not be construed as supply in terms of Section 7(1)(a) of the CGST Act, 2017

## GST – Judicial Precedents

### 3. Audit

Can Parallel proceedings be conducted by the 3 wings of same department for the same tax period?

#### **M/s. R.P. Buildcon Private Limited v. Superintendent, CGST & CX [Calcutta High Court]**

**Facts:** The Superintendent, CGST & CX (“the Respondent) issued notices relating to financial year 2017-2018 to 2019–2020 for an audit under Section 65 of the CGST Act. In the meantime, scrutiny of returns under Section 61 of the CGST Act, 2017 was conducted for the same tax period by the Anti Evasion wing as well as the Range Office.

The Appellant filed a writ petition to quash the show cause notice (“SCN”) issued by the Respondent contending that once an audit under Section 65 of the CGST Act, has been conducted, the scrutiny of returns under Section 61 of the CGST Act, 2017 cannot be done for the same tax period.

**Held:** Since the audit proceedings under Section 65 of the Act has already commenced, it is appropriate that the proceedings should be taken to the logical end. The proceedings initiated by the Anti Evasion and Range Office for the very same period shall not be proceeded with any further.



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### **DISCLAIMER:**

*The views expressed in this Bulletin are personal view of the presenter. This Bulletin includes general information about legal issues and developments in the law of GST in India. Such materials are for informational purposes only and may not reflect the most current legal developments. These informational materials are not intended, and must not be taken, as legal advice on any particular set of facts or circumstances. We disclaim all liability in respect to actions taken or not taken based on any or all the contents of this presentation to the fullest extent permitted by law.*