



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 Technical Updates

Time limit for Reporting Invoices on the IRP Portal

Dated : 13-04-2023

1. It is to inform the taxpayers that it has been decided by the Government to impose a time limit on reporting old invoices on the e-invoice IRP portals for taxpayers with AATO greater than or equal to 100 crores.
2. To ensure timely compliance, taxpayers in this category will not be allowed to report invoices older than 7 days on the date of reporting.
3. Please note that this restriction will apply to the all document types for which IRN is to be generated. Thus, once issued, the credit / Debit note will also have to be reported within 7 days of issue.
4. For example, if an invoice has a date of April 1, 2023, it cannot be reported after April 8, 2023. The validation system built into the invoice registration portal will disallow the user from reporting the invoice after the 7-day window. Hence, it is essential for taxpayers to ensure that they report the invoice within the 7-day window provided by the new time limit.
5. It is further to clarify that there will be no such reporting restriction on taxpayers with AATO less than 100 crores, as of now.
6. In order to provide sufficient time for taxpayers to comply with this requirement, which may require changes to your systems, we propose to implement it from 01.05.2023 onwards.

GST News

GST evasion detection nearly doubles to Rs 1.01 lakh cr in FY23

Dated : 20-04-2023

GST evasion detection by tax officers almost doubled year-on-year to over Rs 1.01 lakh crore in the just concluded 2022-23 fiscal, an official said.

During the last fiscal, a recovery of Rs 21,000 crore was made by the officers of the Directorate General of GST Intelligence (DGGI).

The official said the government is taking steps to increase compliance and using data analytics and human intelligence to identify fraud.

Read more at: <https://indianexpress.com/article/business/economy/gst-evasion-detection-nearly-doubles-to-rs-1-01-lakh-cr-in-fy23-8567083/>

GST – Judicial Precedents

1. Supply

Perquisites provided by the 'employer' to the 'employee' in terms of contractual agreement entered into between them, will not be subjected to GST

M/s. AIA Engineering Limited [AAR, Gujarat]

Facts: The applicant has filed this application for advance ruling in relation with the following questions:

- i. Whether GST is applicable on the amount representing the employee's portion of canteen charges recovered/collected by the applicant from its employees and paid to the canteen service provider on behalf of the employee?
- ii. Whether the Company is eligible to take the ITC for the GST charged by the canteen service provider for the canteen services for its employees where the canteen facility is mandatory in terms of section 46 of the Factories Act, 1948?

Held: In terms of **Circular No. 172/04/2022-GST**, it is 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. Thus, the subsidized deduction made by the applicant from the employees who are availing food in the factory would not be considered as a 'supply'; under the provisions of section 7 of the CGST Act, 2017.

Further, ITC will be available to the appellant in respect of food and beverages as canteen facility is obligatorily to be provided under the Factories Act, 1948, read with Gujarat Factories Rules, 1963 as far as provision of canteen service for full time/direct employees working on permanent basis at the factory is concerned. It is further held that the ITC on GST charged by the canteen service provider will be restricted to the extent of cost borne by the appellant only.

GST – Judicial Precedents

2. Supply

Taxability of services provided by employees of Branch office to Head office

M/s. Profisolutions Pvt. Ltd. [AAR Tamil Nadu]

Facts: The Applicant registered under the Companies Act 2013 in the State of Karnataka, have branch office at Chennai and the branch office is registered in the State of Tamil Nadu under GST Act for providing engineering services for industrial and manufacturing projects.

The branch office of the applicant is providing support services like engineering services, design services, accounting services, etc to the Head Office at Bangalore and also registered in the State of Karnataka under GST Act.

On interpretation of law, applicant states that employees are appointed and working for the company as whole and not employed for head office or branch specifically, which is a distinct person under GST.

Salary and benefits paid to employees are in relation to employment, which is neither a supply of goods nor services under para 1 of the schedule 3 of CGST Act, which reads as 'Services by an employee to the employer in the course of or in relation to his employment'.

Held: From comprehensive reading of the statutory provisions of relevant Acts, any supply of service between two registrations of the same person in the same State or in different States attract the provisions of Section 25 (4) and Section 7 read with Schedule I (2) and Section 15 - Even the services of employees deployed in a registered place of business to another registered premises of the same person will attract the provisions, as the employees are treated as related person in terms of explanation to Section 15 and treated as supply by virtue of Schedule I (2) to CGST Act, 2017.

GST – Judicial Precedents

3. Appeal

Rejection of appeal filed online for non-submission of certified Order copy

KPMG India Pvt. Ltd. versus JCST(Appeals) [P&H High Court]

Held: The High Court held that the certified order copy is not required to be submitted where such orders are already uploaded on GST Portal as such online submission would amount to substantial compliance of Rule 108 of the CGST Rules, 2017.

Accordingly, Orders rejecting appeal for non-submission of certified order copies were set aside.

GST – Judicial Precedents

4. Payment of Tax

Interest cannot be levied on wrong ITC availed but not utilized

M/s. Grundfos Pumps India Pvt. Ltd [Madras High Court]

Facts: The petitioner had been an assessee under the erstwhile Central Excise regime as well as Finance Act, 1994 under which service tax is levied and migrated into the regime of GST on and from 01.07.2017. Tran-1 had been filed on 10.07.2017 and 11.08.2017 bringing forward the unutilized credit of Education Cess and SHEC as transitional credit. Admittedly and the counter filed by the respondent does not dispute this position, though the credit had been transitioned, it had not found place in the Electronic Credit Ledger (ECL).

The ECL is an electronic document which reflects the credit available to a particular assessee and this document falls within the domain of the GST department. There is no explanation for why the transitioned credit did not find place in the ECL. Be that as it may and seeing as the credit was unavailable in the ECL, the petitioner reflected the same as available ITC in its retention and in Form GSTR-3B return.

The audit wing of the GST department upon noticing that there had been credit in the GST 3B that had been later reversed, adopted the view that the petitioner would be liable for interest at 24%, irrespective of fact that such credit had not been utilized.

Held: By virtue of the Amendment in 2022 that has retrospective effect from 2017, it is only when ITC has been wrongly availed and utilized with a revenue impact, that interest liability is attracted. In the present case, the original error of non-maintenance of ECL is admittedly attributable to the department. Moreover, the petitioner has not utilized the credit.

There is no liability to interest, the impugned order to the extent to which it levies interest under Section 50(3) of the CGST, on ITC, Education Cess and Higher Education Cess, is not in conformity with law and is set aside - Petition allowed.



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