

# The GST Bulletin

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**YOUR INDIRECT TAX KNOWLEDGE PARTNER**

## 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/newsletters.php>

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- **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

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## GST Updates – CBIC Notification

Ntf. No.	Summary of Notifications
<p><b>12/2023-CT(R) dated 19.10.2023</b></p>	<p><b>Seeks to amend CGST Rate Notification for Services</b></p> <ul style="list-style-type: none"> <li>• It is already provided that the credit of input tax charged on goods and services used in supplying the service by way of renting of motor vehicle designed to carry passengers, where the cost of fuel is included in the consideration charged from the service recipient, shall not be eligible except in case of the service procured from another service provider of transporting passengers in a motor vehicle or renting of a motor vehicle i.e. from a provider of output services within the same line of business. Now, it has been further added that where the supplier of input service in the same line of business charges central tax at a rate higher than 2.5%, credit of input tax charged on the input service in the same line of business in excess of the tax paid or payable at the rate of 2.5%, shall not be taken. Illustration: 'A' engages 'B' for transport from New Delhi to Jaipur in a motor cab for Rs. 1000. 'B', for supplying the said service, hires a motor cab with operator from 'C' for Rs. 800. 'C' charges 'B' central tax at the rate of 6% (Rs. 48). If 'B' charges 'A' central tax at the rate of 2.5%, he shall be entitled to take input tax credit on the input service in the same line of business supplied by 'C' only to the extent of Rs. 20 (2.5% of Rs. 800) and not Rs. 48.]</li> <li>• The word totalisator has been omitted from the services provided by a race club by way of licensing a bookmaker in such club.</li> <li>• The entry for the Services by way of Gambling has been omitted.</li> </ul> <p>The above changes shall be applicable from 20th of October 2023.</p>

## GST Updates – CBIC Notification

Ntf. No.	Summary of Notifications
<p><b>13/2023-CT(R) dated 19.10.2023</b></p>	<p><b>Seeks to amend CGST exemption Notification</b></p> <ul style="list-style-type: none"> <li>• Exemption has been provided on the Services provided to a Governmental Authority by way of –               <ul style="list-style-type: none"> <li>(a) water supply;</li> <li>(b) public health;</li> <li>(c) sanitation conservancy;</li> <li>(d) solid waste management; and</li> <li>(e) slum improvement and upgradation.</li> </ul> </li> <li>• Services provided by the Ministry of Indian Railways shall not be covered under the exemption by way of Services by the Central Government, State Government, Union territory or local authority.</li> <li>• Services provided by the Ministry of Indian Railways shall not be covered under the exemption by way of Services by the Central Government, State Government, Union territory or local authority to a business entity with an aggregate turnover of up to such amount in the preceding financial year as makes it eligible for exemption from registration under the Central Goods and Services Tax Act, 2017.</li> <li>• Services provided by the Ministry of Indian Railways shall not be covered under the exemption by way of Services by the Central Government, State Government, Union territory or local authority to another Central Government, State Government, Union territory or local authority</li> <li>• Services provided by the Ministry of Indian Railways shall not be covered under the exemption by way of Services by the Central Government, State Government, Union territory where the consideration for such services does not exceed five thousand rupees</li> </ul> <p>The above changes shall be applicable from 20th of October 2023.</p>

## GST Updates – CBIC Notification

Ntf. No.	Summary of Notifications
<p><b>14/2023-CT(R) dated 19.10.2023</b></p>	<p><b>Seeks to amend Reverse Charge Notification</b></p> <p>Consequential changes have been made in the reverse charge notification as the changes have been made in the exemption notification regarding the taxability of services of Ministry of Indian Railways.</p> <p>Services supplies by Ministry of Indian Railways (being Central Government entity) shall not be covered under reverse charge when supplies to a business entity located in the taxable territory.</p> <p>Similarly, the Services supplies by Ministry of Indian Railways (being Central Government entity) by way of renting of immovable property to a person registered under the CGST Act, 2017 shall not be covered under reverse charge.</p> <p>The above changes shall be applicable from 20th of October 2023.</p>
<p><b>15/2023-CT(R) dated 19.10.2023</b></p>	<p><b>Seeks to amend Notification providing the supplies not eligible for refund of unutilized ITC under CGST Act</b></p> <p>Earlier Notification No. 15/2017-CT(R) dated 28-06-2017 provided that no refund of unutilised input tax credit shall be allowed under sub-section (3) of section 54 of the said Central Goods and Services Tax Act, in case of supply of services specified in sub-item (b) of item 5 of Schedule II of the Central Goods and Services Tax Act.</p> <p>Now, it has been amended to provide that no refund of unutilised input tax credit shall be allowed under sub-section (3) of section 54 of the said Central Goods and Services Tax Act, in case of supply of services of construction of a complex, building or a part thereof, intended for sale to a buyer, wholly or partly, where the amount charged from the recipient of service includes the value of land or undivided share of land, as the case may be, except where the entire consideration has been received after issuance of completion certificate , where required , by the competent authority or after its first occupation , whichever is earlier.</p> <p>The above change shall be applicable from 20th of October 2023.</p>

## GST Updates – CBIC Notification

Ntf. No.	Summary of Notifications
<p><b>16/2023-CT(R) dated 19.10.2023</b></p>	<p><b>Seeks to amend the Notification providing the categories of services the tax on intra-State supplies of which shall be paid by the electronic commerce operator (ECO)</b></p> <ul style="list-style-type: none"> <li>• In the category of services by way of transportation of passengers by a radio-taxi, motor cab, maxi cab, motor cycle, omnibus or any other motor vehicle wherein ECO is liable to pay the tax, has been amended to exclude the services by way of transportation of passengers by omnibus.</li> <li>• It has been provided that of the services by way of transportation of passengers by an omnibus is provided by a person other than company through ECO, then ECO shall be liable to pay the tax.</li> <li>• It has been clarified that “Company” has the same meaning as assigned to it in clause (20) of section 2 of the Companies Act, 2013(18 of 2013).</li> </ul> <p>The above changes shall be applicable from 20th of October 2023.</p>
<p><b>17/2023-CT(R) dated 19.10.2023</b></p>	<p><b>Seeks to amend CGST Rate Notification for Goods</b></p> <ul style="list-style-type: none"> <li>• Molasses shall be taxable @ 5% [CGST + SGST]</li> <li>• Food preparation of millet flour, in powder form, containing at least 70% millets by weight, pre-packaged and labelled shall be taxable @ 5% [CGST + SGST]</li> <li>• Spirits for industrial use shall be taxable @ 18% [CGST + SGST]</li> </ul> <p>The above change shall be applicable from 20th of October 2023.</p>
<p><b>18/2023-CT(R) dated 19.10.2023</b></p>	<p><b>Seeks to amend CGST exemption notification for goods</b></p> <ul style="list-style-type: none"> <li>• Food preparation of millet flour, in powder form, containing at least 70% millets by weight, other than pre-packaged and labelled shall be exempted.</li> </ul> <p>The above changes shall be applicable from 20th of October 2023.</p>

## GST Updates – CBIC Notification

Ntf. No.	Summary of Notifications
<b>19/2023-CT(R) dated 19.10.2023</b>	<p><b>Seeks to amend CGST reverse charge notification for goods</b></p> <p>Supply of Used vehicles, seized and confiscated goods, old and used goods, waste and scrap by Ministry of Railways shall not be taxable under reverse charge if supplies by a registered person.</p> <p>The above change shall be applicable from 20th of October 2023.</p>
<b>20/2023-CT(R) dated 19.10.2023</b>	<p><b>Seeks to amend Notification providing the supplies not eligible for refund of unutilized ITC under CGST Act</b></p> <p>Seeks to provide that no refund of unutilised input tax credit shall be allowed u/s 54(3) in supplies of Imitation zari thread or yarn made out of Metallised polyester film /plastic film.</p> <p>The above change shall be applicable from 20th of October 2023.</p>

**Note:** Similar Amendments has been provided in IGST (Rate) Notifications and UTGST (Rate) Notifications.



## GST Technical Updates

### **Facility for the e-commerce operators through whom unregistered suppliers of goods can supply goods**

**Dated : 12-10-2023**

GSTN has also provided APIs for ECOs (through whom unregistered persons can supply goods) to integrate with GSTN to obtain the details and facilitate the unregistered suppliers. The APIs are for validating the demographic details of the said suppliers and also for use in tracking and reporting supplies by such persons. The details of the APIs are as follows:-

a)The name of the APIs developed are :

1. Unregistered Applicants API : To get the details of Unregistered Applicant by passing the enrolment ID in the GET request
2. Unregistered Applicants Validation API: To validate the Mobile Number and Email ID of a Enrolment ID

b)The following is noteworthy for the e-Commerce operators in order to access and integrate the APIs successfully:

1. The e-Commerce operator should contact any GSP to access the above APIs as the APIs are not publically available.
2. To access these APIs Authentication Token should be obtained from the authentication API, the API specs are available at developer portal (<https://developer.gst.gov.in/apiportal/>) under Public API à Authentication.
3. For accessing the public APIs the authentication token should be obtained by using the GSPs credentials.
4. The APIs specs for the two eComm APIs are available on developer portal (<https://developer.gst.gov.in/apiportal/>) under Public API eComm operators.
5. The response of both APIs will be Base64 encoded, no encryption is used.

## GST Technical Updates

### **Facility of enrolment for supply of goods through e-commerce operators by GST un-registered suppliers.**

**Dated : 12-10-2023**

In terms of the recent amendments to the Act and the rules and notification number 34/2023 dated 31.07.2023, persons supplying goods through e-commerce operators shall be exempt from mandatory registration under the CGST Act even if they supply goods through e-commerce operators (ECO).

GSTN has developed the necessary functionality for enrolment of unregistered persons and the same is available on the portal. Accordingly, unregistered person desirous of enrolling on the GST portal for making supplies of goods through ECOs in any one State/UT are hereby advised to follow the path/procedure specified below:

- Visit the GST Portal at <https://www.gst.gov.in/> and click the GST Portal link
- Select the "User Services" Tab and choose "Generate User Id for Unregistered Applicant"
- Click "Yes" on the Warning window which asks you to Continue
- Check the "To apply as a supplier to e commerce operators" box
- Proceed to fill the Form that opens on your screen
- Upon successful validation of your PAN the enrolment number will be generated by the portal.

## GST Technical Updates

### **Advisory: Person supplying of Online Money Gaming services or OIDAR or Both– Form GST REG-10 and Form GSTR-5A**

**Dated : 17-10-2023**

General: In terms of the recent amendments made in the CGST/SGST Act, the IGST Act and the CGST/SGST Rules, any person located outside taxable territory making supply of online money gaming to a person in taxable territory, is liable to get registered in GST and is required to pay tax on such supply. In this context, every person located outside taxable territory making such supplies of online money gaming to a person in India is now mandated to take registration/amend his existing registration in accordance with the proposed Row (iia) in FORM GST REG-10 and also required to furnish information regarding the supplies in the proposed Tables in FORM GSTR-5A. GSTN is in the process of developing the functionality of such new registrations or required amendment in existing registration, as the case may be. In the meantime, till the said functionality is made available on the portal, a workaround is suggested to be followed as below:

#### **1.Registration(Form GST REG-10):**

a)As per the proposed amendments, person engaged in the supply of Online money gaming are required to identify themselves as being engaged in such supplies in Form GST REG-10. Further, new registrations in respect of such supplies may also be required, for which application may have to be filed in the said FORM GST REG-10 and also the 'Type of Supply' may be required to be declared in Row (iia) of the Form GST REG-10 while applying for registration. Existing already registered taxpayers of OIDAR services also would have to amend their registrations by furnishing the said information at Row (iia).

b)As a workaround, it is hereby advised that any person engaged in the supply of Online Money Gaming, who is required to be registered in accordance with the recent amendments, can file their registration application in the existing Form GST REG-10 itself. Along with the said application, such person will also be required to upload a pdf copy of the information furnished in Row 2(iia) of the amended FORM GST REG-10 in the 'Documents Upload' section available in the Part -A of Form GST REG-10 (in the enclosed format).

## GST Technical Updates

### **Advisory: Person supplying of Online Money Gaming services or OIDAR or Both– Form GST REG-10 and Form GSTR-5A**

Dated : 17-10-2023

#### **2. Return(Form GSTR-5A):**

a)Person engaged in the supply of Online Money Gaming are required to furnish the details of such supplies in Table 5D and 5E of Form GSTR-5A.

b)Till such tables are developed and added in Form GSTR-5A on the portal, persons engaged in making supplies of Online Money Gaming are hereby advised to furnish the details of such supplies in the existing Tables 5 and 5A of Form GSTR-5A itself.

The above procedure can be followed till the changes are implemented in GST Portal.

## GST News

### **GST departments on an overdrive with notices and summons**

**Date: 26-10-2023**

Central and state Goods and Services Tax authorities have shot off a spate of notices to companies over the last few months. This is likely to only increase in the coming months.

Tax notices have been issued to companies across sectors from consumer durables and smartphones to insurance and banking to online gaming and service providers. What has left India Inc worried is not just the multiplicity of notices, lack of uniform process, poor coordination between Centre and state tax authorities, and even understanding in the case of certain tax officials of the VAT (Value-Added Tax) era. Concerns around interpretation also exist as such notices mostly pertain to the initial implementation phase of GST, when there were several teething troubles and constant tweaks in policy decisions.

Read more at:

<https://indianexpress.com/article/business/economy/gst-departments-on-an-overdrive-with-notices-and-summons-8998052/>

## GST – Judicial Precedents

### 1. Detention of goods and vehicle

**In absence of any provision that the goods in transit were liable for payment of tax, no evasion of tax could be attributed**

**M/s Vacmet India Ltd. Versus Additional Commissioner Grade -2 (Appeal) and Another [Allahabad High Court]**

**Facts:** While the goods were transported from manufacturing unit of the petitioner at Agra to its unit at Kosi Kalan, Mathura, the vehicle was intercepted and detention order in Form GST MOV 06 under section 129(1) UPGST Act was passed on the ground that part – B of the e-way bill was not filled up. Thereafter, a show cause notice was issued on the same day, i.e., 14.05.2018, proposing to impose tax amounting to Rs. 1,82,000/- on the estimated value of Rs. 6,50,000/-, together with penalty of Rs. 1,82,000/-. The petitioner submitted its reply stating that non-filling up of Part B of e-way bill was a mistake on the part of the transporter and as soon as the petitioner realized the mistake, e-way bill was updated and the Part B was filled up. Thereafter, on 16.05.2018, the respondent no. 2 passed the penalty order under section 129(3) of the UPGST Act. Against the penalty order, the petitioner preferred an appeal before the respondent no. 1, which also dismissed vide impugned order dated 23.02.2019 affirming the penalty order dated 16.05.2018. Hence, this writ petition.

**Held:** Since the goods in question were stock transfer from one Unit to another within the State of Uttar Pradesh (Agra to Mathura) and in absence of any provision being pointed out by the learned ACSC or any authority below that the goods (stock transfer) in transit were liable for payment of tax, no evasion of tax could be attributed to the goods in question. Once there was no intention to evade payment of tax, the entire proceedings initiated against the petitioner are vitiated and are liable to be set aside.

The order passed by the Additional Commissioner, Grade – 2 (Appeal), State Tax, Mathura as well as the order passed by the Assistant Commissioner, State Tax, Mobile Squad, Unit – 4, Mathura cannot be sustained in law and the same are hereby quashed - Petition allowed.

## GST – Judicial Precedents

### 2. Input Tax Credit

**High Court granted stay of adjudication of the show cause notice in case of applicability of time limit in taking ITC in cases where taxpayer discharged IGST on payment made to seconded employees**

**M/s Toyota Kirloskar Motor Pvt. Ltd. Versus Union Of India [Karnataka High Court]**

**Facts:** The Petitioner has filed writ petition challenging the show cause notices in DRC-01s issued by both Central tax and State tax authorities for denial of input tax credit availed on reverse charge basis by relying on Section 16(4) of the CGST Act. After the decision of Supreme Court in the case of Northern Opertaing Systems, the Petitioner discharged IGST on the payments made to seconded employees/ related entities and availed input tax credit of the IGST paid. The Tax Department sought to deny the input tax credit by applying the time limit under Section 16(4) of the CGST Act, besides demanding interest and penalty. The Department also sought to demand interest for delayed payment of IGST. The Petitioner inter alia contested the applicability of Section 16(4) of the CGST Act to reverse charge payments made by recipient of taxable supply.

**Held:** The Hon'ble High Court has in the attached Order granted stay of adjudication of the show cause notices in DRC-01s issued by the Central tax and State tax authorities.

## GST – Judicial Precedents

### 3. Detention of Goods and Vehicle

#### Penalty under Section 129 cannot be levied when only delivery challan was not accompanied with E-way Bill

##### **M/s Prestress Steel LLP, Versus Commissioner, Uttarakhand State GST And Others [Uttarakhand High Court]**

**Facts:** The petitioner placed an order with SAIL, the goods were transported from West Bengal to Kanpur through railway in the wagon against invoices and other documents required under the Act. The wagon was unloaded and taken into custody by the petitioner for further transportation of good to Bazpur. For that purpose two vehicles were deployed bearing registration nos. HP 939081 and UP 25 BT 6528 (“the vehicles”). Accordingly, e- way bill was also generated and goods were moved towards its destination on 04.06.2023. When the vehicles were intercepted by the respondent no. 3, it was found that the vehicles were not carrying the delivery challans as required under Rule 55 (5) (b) of the Central/State Goods and Services Rules, 2017(“the 2017 Rules”). After completing the procedure as required under the Act and Rules, by the impugned order, separate penalty has been imposed with regard to the each of the vehicles engaged in transportation. In these petitions, those two orders dated 09.06.2023 have been challenged. The petitioner also seeks refund of the amount which was deposited on 10.06.2023 pursuant to the impugned orders dated 09.06.2023.

**Held:** In the instant case, there has been no evasion of tax. There has been no intention to evade tax. Every information was with the GST authorities. Even if the petitioner was not carrying any delivery challan, there was no additional information that could have been provided by virtue of production of delivery challan. E-way bill was properly generated. Tax was properly paid. It was mere non-compliance of the provisions of Section 55 (5) (b) of the Act.

This Court is of the view that instead of proceeding under Section 129, the respondents authorities ought to have proceeded under Section 122 of the Act - this Court is of the view that impugned orders are not in accordance with law - Petition allowed.



## GST – Judicial Precedents

### 4. Exemption

#### Exemption on service of printing question papers for the conduct of examinations to educational institution

##### **M/s Saraswaty Press Limited [AAR West Bengal]**

**Facts:** The applicant is an entity engaged in the business of printing including question papers of educational institutions, which requires maintenance of secrecy, accuracy and timely delivery of the material. The applicant has been undertaking the job of printing of question papers for different Universities of various states and charging GST on invoices raised for such services. All its clients are primarily Government Based- both Central and State Governments.

The applicant has made this application under sub-section (1) of section 97 of the GST Act and the rules made there under raising following questions vide serial number 14 of the application in FORM GST ARA-01 as to whether :

The service of printing question papers for the conduct of examinations to educational institutions, supplied by the applicant will be covered by Sr. No 66 of the Notification No. 12/2017-Central tax (rate) as amended, and Notification No. 12/2017-State tax (rate) as amended, and whether such supply of services shall be treated as exempt supply.

**Held:** Circular No 151/07/2021-GST dated 17.06.2021 (CBIC-190354/36/2021-TRU Section-CBEC) has been issued for the purpose of clarification regarding GST on supply of various services by Central and State Boards (such as National Board of Examination) wherein it has been stated that "Central and State Educational Boards" are treated as Educational Institution for the limited purpose of providing services by way of conduct of examination to the students. Therefore, NBE is an 'Educational Institution' in so far as it provides services by way of conduct of examination, including any entrance examination, to the students.

It is noticed from the documents submitted that the applicant has been awarded agreement/work order by University namely Jharkhand University of Technology. There is no dispute that this University as referred above is regarded as 'educational institution'.

The supply of services for printing of question papers being provided by the applicant to different universities for conducting examinations shall get covered under serial number 66 of the Notification No. 12/2017- Central Tax (Rate) dated 28th June, 2017/West Bengal State Notification No. 1136 FT. dated 28.06.2017, as amended.

## GST – Judicial Precedents

### 5. Reverse Charge

#### GST on personal guarantee furnished by Director on behalf of the Company

##### **M/s BST Steels Pvt. Ltd. Versus the Superintendent of Central Tax [Telangana High Court]**

**Held:** A plain reading of the notification referred to in the preceding paragraphs would clearly give an indication that the Central Government vide the said notification had specifically notified that the services provided by the Director of a company or a body corporate to the said company or said body corporate be leviable of tax on reverse charge basis and in the said event, the company would become liable to pay the tax for the said services. The said notification is also not under challenge and the same still holds good.

In the teeth of the said notification, the finding arrived at by the respondent No. 1 at the first instance dated 18.11.2021 and the order in original dated 31.03.2023 passed by the respondent No. 3 also cannot be said to be in any manner erroneous, arbitrary or bad in law - No strong case made out by the petitioner calling for interference with the said impugned order.



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