



**Newsflash:
GST Quarterly Digest
(July 2023 to September 2023)**

THE POWER OF BEING UNDERSTOOD



Newsflash GST Quarterly Digest [July 2023 to September 2023]

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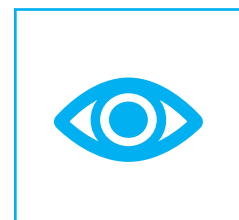
QUARTER AT A GLANCE

We are pleased to present the **GST Quarterly Digest**, summarizing the significant amendments, clarifications, case laws, notifications and circulars released during July 2023 to September 2023. The report incorporates key highlights under the Indirect Tax, providing a concise overview of the important updates during this period.



Implementation of geocoding technology and biometric authentication for strengthening the GST registration process

- The GSTN has implemented “**Geocoding**” functionality to allow **geocoding of the business address for all states and union territories**. In simpler terms, geocoding is a process by which an address or location description is converted into geographical coordinates i.e. determining the reference points of latitude and longitude plotting the exact position on the map. Thus, it enables to **locate and place the principal place of business accurately on the global map tool on the basis of precise measurements**.
- Further to tighten the control and aid to establish absolute genuineness of the persons seeking to obtain GST registrations, and even existing registered persons; GSTN to initiate the **biometric authentication at designated Aadhaar Centers**. Biometric authentication is a security process that verifies a person’s identity using their distinctive biological characteristics such as fingerprint mapping, voice recognition, retina scan etc.



Imposition of time-limit for reporting invoices and debit/credit notes on E-invoicing portal for taxpayers whose aggregate annual turnover is equivalent to or exceeds INR 100 crores

- The National Informatics Centre has introduced an advisory communicating the time-limits with respect to reporting of the invoices on the e-invoice IRP portals.
- From **1 November 2023 onwards**, the taxpayers with PAN based **annual turnover equivalent to or exceeding INR 100 crores would not be permitted to generate IRN after 30 days from the date of the document** i.e. tax invoice or debit/credit note, as the case may be.



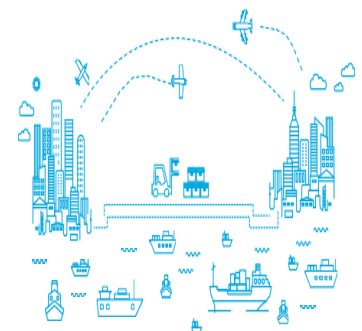
Discussion and way forward on constitution of GST Appellate Tribunal

- To ensure seamless constitution and functioning of the GST Appellate Tribunal (GSTAT), the Council in its 50th meeting recommended for appointment of the members, the conditions governing the President of the Tribunal, so on and so forth.
- Further, in accordance with the recommendations of the Council, the changes brought about in GST provisions w.r.t. the GSTAT vide the Finance Act, 2023 have been brought into effect from 1 August 2023.
- Setting up of State Benches of the GSTAT would be taken up in a phased manner. In this regard, the Central Government has issued a notification **S.O. 4073 (E) - Central GST (CGST) dated 14th September 2023** determining constitution of State Benches (31 benches) of the GSTAT.

KEY NOTIFICATIONS

Notification No. 13/2023 – IGST (Rate) dated 26th September 2023

Summary of the Notification- – The said notification seeks to amend IGST (Rate) Notification No. 10/2017 which notifies the categories of services on which IGST shall be paid on a reverse charge basis. In this regard, Sr.No. 10 of the principal notification is omitted to give legal impact to the Hon'ble Supreme Court judgement in the case of M/s Mohit Minerals upholding **non-levy of IGST under reverse charge mechanism on inward ocean freight in case of CIF (Cost Insurance Freight) import transactions.**



Notification (DGFT) No. 33/2023 dated 26th September 2023

Summary of the Notification- The said notification seeks to **extend the Remission of Duties and Taxes on Exported Products (RODTEP) scheme for exports made from 1 October 2023 and shall be applicable till 30 June 2024.**

Notification (DGFT) No. 23/2023 dated 03rd August 2023 -

Import Policy in respect of Items under **HSN 8471 (laptops, tablets, all-in-one personal computers and ultra small form factor computers)** is revised from ‘free’ to ‘restricted’ and their import would be allowed against a **valid license for restricted imports w.e.f. 01 November 2023**. The said restriction shall, however, **not be applicable to imports under Baggage Rules**.

Further, **certain exemptions** have been granted as follows:

- Exemption from import licencing is given to 1 such item except Servers per consignment.
- Exemption from import licencing is provided up to 20 items per consignment for R&D, Testing, Benchmarking and Evaluation, Repair and return, Product Development purposes.
- Exemption is further provided for re-import of such items repaired abroad.
- Exemption is also provided where the item is an essential part of Capital Goods.



Notification No. G.S.R. 491 (E) – Prevention of Money Laundering dated 07th July 2023

Summary of the Notification- The said notification seeks to authorize **Enforcement Directorate (ED)** and **Financial Intelligence Unit (FIU)** to share information with **Goods and Services Tax Network (GSTN)** under the provisions of **Prevention of Money Laundering Act (PMLA), 2002**. This integration would enable **smooth flow of relevant information** between the **GSTN, ED, and other esteemed investigative agencies** which will **cumulatively aid and strengthen the mechanism to combat fraudulent activities under GST and related money-laundering offences**.



Notification No. 28/2023- Central Tax dated, 31st July 2023

Summary of the Notification- The amendments brought about in the **CGST Act, 2017 and IGST Act, 2017 vide the Finance Act, 2023** have been notified through the said notification **with effect from 01 October 2023**. The **key amendments** coming into force from 01 October 2023 are summarized as below:

Sr. No.	Nature of amendment	Governing provisions
i.	Composition scheme benefits to be made available to the registered persons supplying goods through an electronic commerce operator	Section 10(2)(d) and section 10(2A)(c) of CGST Act, 2017
ii.	Amendment to provisos of Section 16(2) of the CGST Act to align with the existing return filing system	Second and third provisos to Section 16(2) of CGST Act, 2017
iii.	‘Supply of warehoused goods before clearances’ to be considered as an exempt supply for purpose of computation of reversals under Rule 42 in accordance with Section 17(2) of the CGST Act	Explanation to Section 17(3) of CGST Act, 2017
iv.	Blocking Input tax credit under Section 17(5) of the CGST Act in case of expenditure incurred for discharge of Corporate Social Responsibility (CSR) obligations	Section 17(5)(fa) of CGST Act, 2017
v.	Retrospective amendment of Section 23(2) with effect from 01 July 2017 empowering the government to notify the categories of	Section 22(1), 23 and 24 of CGST Act, 2017

	persons who may be exempted from obtaining registration and which would have an overriding effect on anything contained in Section 22(1) or Section 24 of the CGST Act.	
vi.	Amendment to Section 62(2) of the CGST Act to enhance the time-limit for filing of pending returns for deemed withdrawal of assessment order determining the tax liability on best judgement basis from 30 days of service of the said order to 60 days of service of the order.	Section 62(2) of the CGST Act, 2017
vii.	Introduction of time-limit of 3 years from the due-date of filing beyond which GSTR1/3B/8/9 returns would not be allowed to be filed on the GST portal	Sections 37(11), 39(11) and 44(2) of the CGST Act, 2017
viii.	Insertion of new sub-section 122(1B) thereby levying the penal provisions on Electronic Commerce Operators in case of contravention of certain provisions	Section 122(1B) of the CGST Act, 2017
ix.	Amendments to Section 132 seeking to decriminalise several offences and raising the monetary limit for initiation of prosecution	Section 132(1) of the CGST Act, 2017
x.	Changes in provisions of Compounding of Offences by way of amendments to Section 138 and rationalisation of minimum and maximum amounts prescribed for compounding of offences	Section 138(1) and (2) of CGST Act, 2017
xi.	Sharing of information furnished on GST, e-invoicing and e-way bill portals with such other notified systems by way of insertion of new Section 158A	Section 158A of CGST Act, 2017
xii.	Retrospective applicability of 'no-supply' transactions under Para 7, 8(a) and 8(b) of Schedule III of the CGST Act w.e.f. 01 July 2017	Schedule III of the CGST Act, 2017
xiii.	Broad-basing 'Non-taxable online recipient' by eliminating the condition of such recipients receiving OIDAR services for purposes other than commerce, industry, business or profession	Section 2(16) of the IGST Act, 2017
xiv.	Removal of condition of being 'essentially automated and involving minimal human intervention' for OIDAR services	Section 2(17) of the IGST Act, 2017
xv.	Omission of specific provision to determine the Place of Supply in case of transportation of goods outside India, where both the supplier and recipient are located in India	Proviso to Section 12(8) of the IGST Act, 2017
xvi.	Omission of specific provision of Place of Supply in relation to services of transportation of goods when supplier or recipient is located outside India	Proviso to Section 13(9) of the IGST Act, 2017

INSERTION/ AMENDMENT OF RULES

Rule 138F of CGST Rules, 2017 -

- A new rule 138F has been inserted which deals with the **generation of e-way bills in case of intra-State movement of gold, precious stones, etc.**
- E-way bill to be generated in case of intra-state movement of below goods where the consignment value of such goods exceeds a notified amount (as per notification to be issued by the State in said regard) and not below **INR 2 lakhs**:

- *Natural or cultured pearls and precious or semi-precious stones; precious metals and metals clad with precious metal (Chapter 71)*
- *Jewellery, goldsmiths' and silversmiths' wares and other articles (Chapter 71) excepting Imitation Jewellery (7117)*
- Further, **furnishing of vehicle details in Part B of Form GST EWB-01 shall not be required** for such goods and e-way bill shall be generated on furnishing information in Part A.

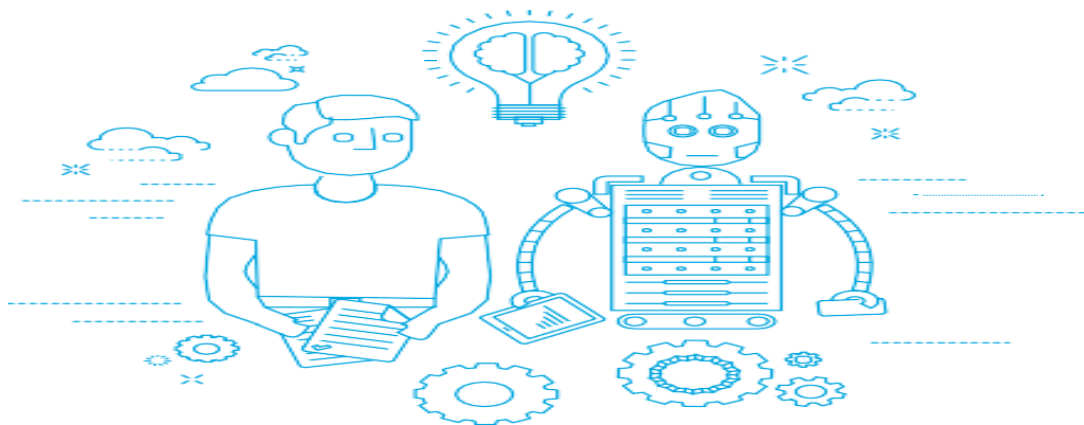
Rule 88 of CGST Rules, 2017 -

- A new rule **88D** has been inserted which pertains to **manner of dealing with difference in input tax credit available in auto-generated statement in Form GSTR 2B vis-à-vis that availed by a registered person through return in Form GSTR 3B.**

Rule 64 of CGST Rules, 2017 -

- With effect from 01 October 2023, the supplier of OIDAR services from a place outside India shall furnish the details of supplies made to a **non-taxable online recipient as well as to a registered person in India** vide filing of return in **FORM GSTR-5A.**

ONLINE MONEY GAMING



In its 51st meeting, GST Council deliberated upon the taxability and valuation aspects in relation to online gaming, horse racing and casinos and in accordance with the recommendations made by the Council, below changes in GST provisions have been brought about with effect from 01 October 2023.

Insertion of definitions of 'online gaming', 'online money gaming' and 'virtual digital assets'

'Online gaming', 'Online money gaming' and 'virtual digital assets' have been defined under clauses **80A, 80B and 117A of Section 2 of CGST Act, 2017** as under:

"online gaming" means offering of a **game on the internet or an electronic network** and includes online money gaming

"online money gaming" means online gaming in which **players pay or deposit money or money's worth, including virtual digital assets**, in the expectation of winning money or money's worth, including virtual digital assets, in any event including game, scheme, competition or any other activity or process, **whether or not its outcome or performance is based on skill, chance or both** and whether the same is permissible or otherwise under any other law for the time being in force

"virtual digital asset" shall have the same meaning as assigned to it in clause (47A) of section 2 of the Income-tax Act, 1961 (43 of 1961.)

[Amendment in Section 24 of the CGST Act, 2017](#)

Clause (xia) is inserted in **Section 24 of CGST Act, 2017** to mandate **GST registration for suppliers of online money gaming located outside India**, and reads as under;

Every person supplying online money gaming from a place outside India to a person in India

[Amendment in Schedule III of the CGST Act, 2017](#)

Schedule III of CGST Act 2017 lists down the activities or transactions which shall be treated neither as a supply of goods nor of services. **Entry at Sr.No. 6** in Schedule III is amended to substitute 'lottery, betting and gambling' by the words 'specified actionable claims' and now reads as under.

Actionable claims, other than specified actionable claims

Further, 'specified actionable claims' is notified vide **CGST (Rate) Notification No. 11/2013** dated **29 September 2023** to include the following:

- (i) betting;
- (ii) casinos;
- (iii) gambling;
- (iv) horse racing;
- (v) lottery; or
- (vi) online money gaming

[Insertion of Section 14A in IGST Act, 2017 to provide for GST liability on supplier outside India supplying online money gaming services to a person in India](#)

- As per the said section, liability for GST payment on the supply of online gaming is cast upon suppliers located outside India and rendering online money gaming services to a person in India.
- Such extra-territorial suppliers may obtain a single GST registration in India through a simplified registration scheme. Further, in case of non-compliance with the said provisions, any information generated, transmitted, received or hosted in any computer resource used for supply of online money gaming by such supplier shall be liable to be blocked for access by the public.

[Valuation of supply in relation to online gaming and actionable claims in casinos to be at entry level](#)

- **Rule 31B** has been inserted which prescribes the mechanism of valuation of supply of online gaming including online money gaming. The value of supply of online gaming including supply of actionable claims involved in online money gaming shall be the **total amount paid or payable to**

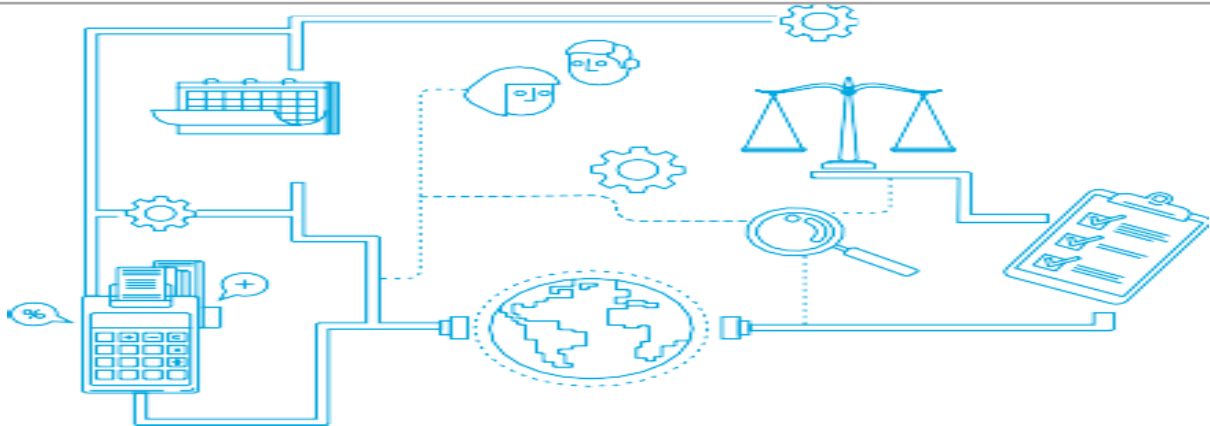
or deposited with the supplier by way of money or money's worth. The amount entered into games or bets out of winnings of previous games/bets shall be excluded from the transaction value.

KEY CIRCULARS

The gist of important circulars issued under GST is tabulated as under:

Circular No.	Clarification through the Circular
Circular No. 192/04/2023-GST dated 17th July 2023	- It has been clarified through the said circular that interest on erroneously availed IGST would be computed by considering balances available under all the heads i.e. IGST, CGST and SGST in electronic credit ledger in a cumulative manner.
Circular No. 193/05/2023-GST dated 17th July 2023	- The manner of dealing with difference in ITC availed in Form GSTR 3B as against amounts reflecting in GSTR 2A for the period 01 April 2019 to 31 December 2021 and the applicability of earlier Circular No. 183/15/2022 to period 01 April 2019 to 31 December 2021 has been clarified through the said circular.
Circular No. 194/06/2023-GST dated 17th July 2023	- The said circular has been issued in the light of Open Network for Digital Commerce (ONDC) and provides clarity on issues of taxability and compliances under Section 52 of the Act where multiple ECOs are present in one transaction.
Circular No. 195/07/2023-GST dated 17th July 2023	- The said circular seeks to provide clarity on several ambiguities surrounding taxability and claim of ITC on warranty replacement of parts and repair services during warranty period.
Circular No. 196/08/2023-GST dated 17th July 2023	- Securities are neither goods nor services as per the definitions laid down under GST. Thus, the activity of holding of shares of subsidiary company by its parent company would not be per se treated as a supply of services.
Circular No. 198/10/2023-GST dated 17th July 2023	- It has been clarified that TDS deductors would be treated as registered under GST as they are liable for compulsory registration and hence, registered persons meeting the e-invoicing applicability criteria shall be required to comply with e-invoicing requirements.
Circular No. 199/11/2023-GST dated 17th July 2023	- Clarification regarding taxability of services provided by an office of an organisation in one State to the office of that organisation in another State, both being distinct persons has been provided by the said circular.
Circular No. 201/13/2023 - GST dated 01st August 2023	- Clarification regarding applicability of GST on services supplied by a director to a body corporate - Clarification regarding taxability of supply of food and beverages in cinema halls as restaurant services

KEY JUDICIAL PRONOUNCEMENTS



Name of the case: **SUNCRAFT ENERGY PRIVATE LIMITED AND ANOTHER VERSUS THE ASSISTANT COMMISSIONER, STATE TAX, BALLYGUNGE CHARGE AND OTHERS [2023 (8) TMI 174 - CALCUTTA HIGH COURT]**

Judgement pronounced by: CALCUTTA HIGH COURT

Summary of the facts:

The appellant's Input Tax Credit (ITC) claim was denied due to differences in amount of ITC availed by the appellant in their GSTR 3B vis-à-vis auto-populated GSTR 2A report. Consequently, a show cause notice was issued upon the appellant on the grounds of excess claim of ITC.

Contesting the allegations levied by the show cause notice, the appellant filed their replies stating that they had made payment of taxes to the supplier and thereafter claimed ITC in relation to the same. However, in disregard of their submissions, the adjudicating authority proceeded to pass an adverse order confirming demand along with interest and penalty. The appellant filed an appeal to challenge the said order.

Synopsis of the judgement:

The Hon'ble Calcutta High Court observed that the show cause notice nowhere questioned non-possession of tax invoice by the appellant neither the receipt of goods/services has been alleged. Further, the appellant in their submissions while addressing the show cause notice, clearly stated that they are in possession of tax invoice, are in receipt of goods or services and the payment has been made to the supplier. The tax invoice and bank statements were submitted as documentary proof to substantiate their valid claim of ITC. The Hon'ble HC held that the adjudicating authority must have first resorted to action against the defaulting supplier and recovery should have been initiated against the recipient only in exceptional circumstances such as missing dealer, closure of business by the supplier or supplier not having adequate assets. The actions of the adjudicating authority in directing the appellant to reverse the ITC availed by them without taking necessary actions against the supplier was found to be untenable. The appeal was thus, allowed.

Name of the case: THIRUMALAKONDA PLYWOODS, VERSUS THE ASSISTANT COMMISSIONER – STATE TAX, ANANTAPUR CIRCLE – 1 [2023 (7) TMI 1226 - ANDHRA PRADESH HIGH COURT]

Judgement pronounced by: ANDHRA PRADESH HIGH COURT

Summary of the facts:

The petitioner claimed ITC pertaining to the month of March 2020 in their GSTR 3B return filed on 27 November 2020 i.e. beyond the timelines prescribed under Section 16(4) of CGST Act, 2017. The ITC claimed by the petitioner was found to be time-barred in view of Section 16(4) of CGST Act, 2017 and thus raised as a demand of INR 11,24,994/- towards tax, penalty and interest during assessments.



Synopsis of the judgement:

The Hon'ble Andhra Pradesh High Court while dismissing the writ filed by the petitioner observed the below:

Input tax credit is a benefit/rebate provided by the legislature and hence the same can be contained via imposition of conditions, time limits which is not disputable on the grounds of violation of constitutional provisions.

Section 16(2) of the CGST Act, 2017 begins with a non obstante clause and is followed by a negative sentence 'no registered person shall be entitled to the credit of any input tax in respect of any supply of goods or services or both to him unless' which signifies that Section 16(2) is not an enabling provision but a restricting provision. It restricts the ITC which is allowed by Section 16(1) which is in fact an enabling provision. Thus, the non-obstante clause in Section 16(2) is meant to override the enabling provision stipulated under Section 16(1).

Where a non-obstante clause is a mere restricting provision, there cannot be an interpretation taken that it shall serve to restrict or override other restricting provisions; furthermore when the two are non-contradictory neither overlap each other.

It was further observed that insertion of Section 16(4) denotes a clear intent of the legislature to impose a time limit for claiming of ITC, and hence insertion of 16(4) to levy a time limit and further intending to override the same by way of Section 16(2) would be a plainly futile exercise.

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6 October 2023

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