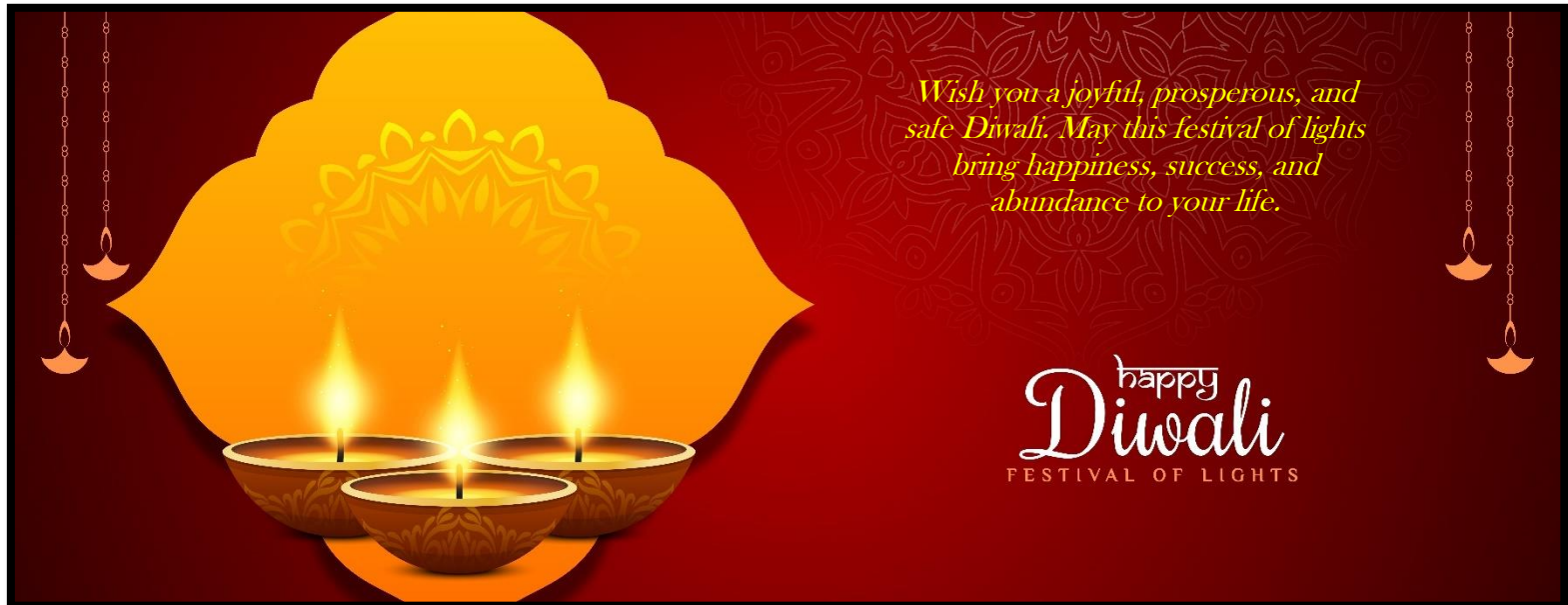


Friday,
November 1,
2024

GST LAW COMMUNIQUE

Volume 3
Issue 7

Latest updates for the month of October 2024



Compliance Calendar for the month of November 2024

Due Date of Compliance	Compliance
10.11.2024	Monthly GSTR 7 for the month of Oct 2024 (TDS deductor) Monthly GSTR 8 for the month of Oct 2024 (TCS collector)
11.11.2024	Monthly GSTR 1 for the month of Oct 2024 (Regular Monthly Taxpayer)
13.11.2024	IFF facility under the QRMP scheme (Oct 2024)
13.11.2024	GSTR-5 for the month of September 2024 (Non-Resident Taxpayer)
13.11.2024	GSTR-6 for the month of September 2024 (Input Service Distributor)
18.11.2024	Statement of payment by composition dealer in CMP-08
20.11.2024	Monthly GSTR 3B for the month of Oct 2024 (Regular Monthly Taxpayer) Monthly GSTR 5A for the month of Oct 2024 (OIDAR service provider)
25.11.2024	Monthly tax payment for the month of Oct 2023 in Form GST PMT 06 under the QRMP scheme

GST Revenue for the month of October 2024

Gross Goods and Services Tax (GST) collections in October stood at Rs 1.87 lakh crore, recording a yearly jump of 8.9 percent, according to data released by the Ministry of Finance on November 1. In October 2023, total GST collection stood at Rs 1.72 lakh crore.

As per the official data, collections in CGST, SGST, IGST and cess increased year-on-year in October. The Central GST collection stood at Rs 33,821 crore, State GST at Rs 41,864 crore, Integrated IGST at Rs 99,111 crore and cess at Rs 12,550 crore during the month.

Incorporating

- 1] Important Notifications
- 2] Important Circulars/Clarifications
- 3] Important Case laws, AAR, AAAR
- 4] Compliance calendar for the month of October 24



Crucial considerations to bear in mind before filing GSTR-1 & GSTR-3B for the month of October 2024

01

Reporting Missing Invoices for FY 2023-24

Ensure that outward supplies (sales) as per your books of accounts with the supplies declared in FORM GSTR-1 & 3B are matching. Any missing supplies, such as invoices or debit notes, must be reported in FORM GSTR-1 & 3B when filing the return for October 2024, before November 30, 2024. Failure to do so could result in your customers losing input tax credit for these invoices or debit notes.

02

Amendments/Rectifications for FY 2023-24

Section 37 of the CGST Act, 2017 permits registered person to rectify errors or omissions in supplies declared in FORM GSTR-1 & GSTR-3B. This rectification is allowed for FY 2023-24 until November 30, 2024. Likewise, you may declare details of credit notes for supplies made in FY 2023-24 till November 30, 2024, or the filing of the annual return for FY 2023-24, whichever is earlier

03

Pending Input Tax Credit for FY 2023-24

Registered persons can claim credit for inward supplies from FY 2023-24 till November 30, 2024, or the filing of the annual return for FY 2023-24, whichever is earlier. Reconciling the credit recorded in your books with the credit available in FORM GSTR-2B and claiming any missing credit, subject to meeting the conditions under Section 16(2), in the October 2024 return

04

Payment of tax by the supplier

A registered person is required to reverse input tax credit taken for invoices of FY 2023-24 where the supplier has furnished details in FORM GSTR-1 and communicated them to the recipient in FORM GSTR-2B, but the GSTR-3B return for the corresponding tax period is not submitted by the supplier until September 30, 2024. Reversals can be made till November 30, 2024, without interest under Section 50. Interest would be payable if reversals are made after November 30, 2024. However, registered individuals can reclaim the credit once the supplier files their return

Note: Although the compliance deadline is stated as November 30 for all of the above cases, it's essential to consider the due date for filing FORM GSTR-1 & GSTR-3B as the final date for these obligations in practical terms.

Article of the month**Hon. Supreme Court Judgment on availability of ITC on Plant & /or Machinery****1| Introduction:-**

There always have been controversies regarding the applicability of Section 17(5) of CGST/SGST Act, 2017. This Section provides for certain restrictions on the availability of Input Tax Credit. Sub-sections (c) & (d) of the said Section are also matters of litigation for many years. These sub-sections deal with the restriction on ITC related to Works Contract Services & to goods & services which are used for the construction activities.

- M/s. Safari Retreats Pvt. Ltd. (hereinafter referred to as “company”) was engaged in the construction of shopping malls and letting out of the shops constructed. The company availed ITC on materials and other inputs in the form of cement, bricks, sand, steel, electric equipments and services in the form of consultancy, architectural, legal services, etc.
- Revenue objected on this ITC quoting Section 17(5) & 17(6) of CGST/SGAT Act, 2017 & stating that since the inputs & services were used for the construction activity, ITC was not permissible.
- The company filed a writ petition before Hon. Orissa High Court & the court allowed all the Input Tax Credit availed by the company. Hon. High Court particularly laid on the emphasis on Section 17(5)(d) while giving the judgment.
- Revenue filed Special Leave Petition (SLP) against said order of Orissa High Court & Hon. Supreme Court passed a landmark judgment giving the a partial relief to the company. [reported in (2024) 23 Centax 62 (S.C.)]

This article intends to deal with the important issues discussed by the Apex Court.

2| Sub-Sections 17(5)(c) & (d):-

In order to understand the issue involved in the abovementioned case, it is necessary to read the provisions of Section 17(5)(c) & (d) of CGST/SGST Act, 2017.

“Section 17(5):- Notwithstanding anything contained in sub-section (1) of section 16 and sub-section (1) of section 18, input tax credit shall not be available in respect of the following, namely:—

(c) works contract services when supplied for construction of an immovable property (other than plant and machinery) except where it is an input service for further supply of works contract service;

(d) goods or services or both received by a taxable person for construction of an immovable property (other than plant or machinery) on his own account including when such goods or services or both are used in the course or furtherance of business.

Explanation.—For the purposes of clauses (c) and (d), the expression “construction” includes reconstruction, renovation, additions or alterations or repairs, to the extent of capitalisation, to the said immovable property;”

Explanation at the end of Section 17 is given as follows-

“Explanation.— For the purposes of this Chapter and Chapter VI, the expression “plant and machinery” means apparatus, equipment, and machinery fixed to earth by foundation or structural support that are used for making outward supply of goods or services or both and includes such foundation and structural supports but excludes—

- (i) land, building or any other civil structures;*
- (ii) telecommunication towers; and*
- (iii) pipelines laid outside the factory premises.”*

3| Summary of the judgment passed by Hon. Supreme Court :-

Paras 64 to 67 of the judgment throw light on the highlights of the judgment.

Paras are quoted as per the judgment as under-

A| Para 64 :- Constitutional validity of Sub-Section 17(5)(c) & (d) is upheld.

B| Para 65:-

i). The expression “plant or machinery” used in Section 17(5)(d) cannot be given the same meaning as the expression “plant and machinery” defined by the explanation to Section 17;

ii) The question whether a mall, warehouse or any building other than a hotel or a cinema theatre can be classified as a plant within the meaning of the expression “plant or machinery” used in Section 17(5)(d) is a factual question which has to be determined keeping in mind the business of the registered person and the role that building plays in the said business. If the construction of a building was essential for carrying out the activity of supplying services, such as renting or giving on lease or other transactions in respect of the building or a part thereof, which are covered by clauses (2) and (5) of Schedule II of the CGST Act, the building could be held to be a plant. Then, it is taken out of the exception carved out by clause (d) of Section 17(5) to sub-section (1) of Section 16. Functionality test will have to be applied to decide whether a building is a plant. Therefore, by using the functionality test, in each case, on facts, in the light of what we have held earlier, it will have to be decided whether the construction of an immovable property is a “plant” for the purposes of clause (d) of Section 17(5).

C] Para 66:- In the light of what we have held above, by setting aside the impugned judgment in Civil Appeal Nos. 2948 and 2949 of 2023, the writ petitions are remanded to the High Court of Orissa for limited purposes of deciding whether, in the facts of the case, the shopping mall is a “plant” in terms of clause (d) of Section 17(5). Appeals are partly allowed in above terms.

D] Para 67 :- While deciding these cases, we cannot make any final adjudication on the question of whether the construction of immovable property carried out by the petitioners in Writ Petitions amounts to plant, and each case will have to be decided on its merit by applying the functionality test in terms of this judgment. The issue must be decided in appropriate proceedings in which adjudication can be made on facts. The petitioners are free to adopt appropriate proceedings or raise the issue in appropriate proceedings.

4] Conclusion :-

i) Hon. Supreme Court has upheld the Constitutional validity of Sub-sections 17(5)(c) & (d) which means the taxpayers cannot challenge these sub-sections as ultra-virus the Constitution of India.

ii) There is a distinction between the terms “Plant or Machinery” & “Plant & Machinery”.

iii) The question of whether a civil construction or a building is a “Plant” (under the scope of sub-section 17(5)(d) of CGST/SGST Act,2017) or not will depend on the fact as to whether the building is essential for carrying out the activity of supplying services. Hence the functionality test is very important to decided this issue.

iv) The case is remanded back to Orissa High Court for deciding the above issue. It means that M/s.Safari Retreats Pvt. Ltd. has got partial relief in this case.

v) In future each case will have to be decided on its merit by applying the functionality test in terms of this judgments.

B] Important Notifications (Rate)

1] Changes in rate of goods: Following changes are made in the rates of goods w.e.f. 10th Oct, 2024

Sr No	HSN	Name of the Goods	Rate of Tax
1	30 or any Chapter	- Trastuzumab Deruxtecan - Osimertinib - Durvalumab	5%
2	1905 90 30	Extruded or expanded products, savoury or salted (other than unfried or un-cooked snack pellets, by whatever name called, manufactured through process of extrusion	12%

3	9401 [other than 9401 10 00 or 9401 20 00	Seats (other than those of heading 9402), whether or not convertible into beds and parts thereof other than seats of a kind used in aircraft or seats of a kind used for motor vehicles”;	18%
4	9401 20 00	Seats of a kind used for motor vehicles	28%

[Notification No. No. 05/2024 - Central Tax (Rate) dated 08th October, 2024]

2] RCM on metal scrap: Metal scrap falling under Chapter 72 to 81 purchased from any unregistered person by any registered person is subject to payment of tax under the reverse charge mechanism w.e.f. 10th October, 2024.

[Notification No. No. 06/2024 - Central Tax (Rate) dated 08th October, 2024]

3] Changes in the rate of tax on services: Supply of services by way of transportation of passengers, with or without accompanied baggage, by air, in a helicopter on seat share basis are subject to 5% GST w.e.f. 10th October, 2024 subject to the condition that credit of input tax charged on goods used in supplying the service has not been taken.

[Notification No. No. 07/2024 - Central Tax (Rate) dated 08th October, 2024]

4] Exemption from payment of tax to certain services: Following services are included in the Notification No 12/2017 Central Tax (Rate) dt. 28th June, 2017 w.e.f. 10th October, 2024-

Sr No	SAC	Description of Service
1	Heading 9969 or Heading 9986	Supply of services by way of providing metering equipment on rent, testing for meters/transformers/capacitors etc., by electricity transmission and distribution utilities to their consumers
2	Heading 9981	Research and development services against consideration received in the form of grants supplied by - (a)a Government Entity; or (b)a research association, university, college or other institution, notified under section 35 (1) (ii) or (iii) of the Income Tax Act, 1961
3	Heading 9992	Services of affiliation provided by a Central or State Educational Board or Council or any other similar body, by whatever name called, to a school established, owned or controlled by the Central Government, State Government, Union Territory, local authority, Governmental authority or Government entity
4	Heading 9983 or Heading 9991 or Heading 9992	Any services provided by - (a)the National Skill Development Corporation set up by the Government of India;

		<p>(b)the National Council for Vocational Education and Training;</p> <p>Ian Awarding Body recognized by the National Council for Vocational Education and Training;</p> <p>(d)an Assessment Agency recognized by the National Council for Vocational Education and Training;</p> <p>Ia Training Body accredited with an Awarding Body that is recognized by the National Council for Vocational Education and Training,</p> <p>in relation to-</p> <p>(i)the National Skill Development Programme or any other scheme implemented by the National Skill Development Corporation; or</p> <p>(ii)a vocational skill development course under the National Skill Certification and Monetary Reward Scheme; or</p> <p>(iii)any National Skill Qualification Framework aligned qualification or skill in respect of which the National Council for Vocational Education and Training has approved a qualification package</p>
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[Notification No. 08/2024-Central Tax (Rate) dated 08th October, 2024]

5] RCM on renting of immovable property: Service by way of renting of any immovable property other than residential dwelling by any unregistered person to any registered person is now subject to payment of tax under the reverse charge mechanism w.e.f. 10th October, 2024

[Notification No. 08/2024-Central Tax (Rate) dated 08th October, 2024]

B] Important Notifications

1] Changes in CGST Rules, 2017: Following changes are made in the CGST Rules, 2017

1.1] No ITC in case of demand under Section 74 [Rule 36(3)]: The word Section 74 is inserted after the word fraud, wilful misstatement or suppression of facts. Thereby the credit is disallowed on the fraud, wilful misstatement or suppression of facts only when demand is made under Section 74 w.e.f. 01.11.2024.

1.2] Consolidated RCM Invoice (Omission of Second Proviso to Rule 47(s)): As per the second proviso to Rule 47(s), a registered person was allowed to issue a consolidated invoice at the end of the month in respect of the inward supply that is subject to reverse charge mechanism under Section 9(4) where the aggregate value of such supplies exceeds Rs. 5000/- in a day from any or all the supplier. Such proviso is now omitted w.e.f.01.11.2024.

1.3] Time limit for issuing tax invoice in cases where recipient is required to issue invoice[Rule 47A]: Rule 47A is issued to specify the time limit for issuance of invoice in cases where a registered person is liable for payment of tax under reverse charge mechanism under Section 9(3) or 9(4). The time limit of 30 days from the date of receipt of supply is defined in such cases for the issuance of an invoice under Section 31(3)(f) of the CGST Act.

1.4] Time limit for filing GSTR-7 [Rule 66]: Time limit for furnishing TDS return in FORM GSTR-7 is now embedded in Rule 66. Deductor of TDS is required to furnish details of TDS deducted in FORM GSTR-7 on or before 10th of the succeeding month.

1.5] Reference of Section 74A: Section 74A is inserted w.e.f.01.11.2024 in place of Section 73 & 74 from FY 2024-25. Reference of Section 74A is inserted in Rule 88B, 88D, 96B, 121, 142, 142

1.6] Intimation of tax paid to the proper officer [Rule 142]: The person chargeable with tax may pay tax amount along with interest within a prescribed period as stated under Section 73(8) or under 74A(8)(ii) or tax, interest and penalty under Section 74(8) and Section 74A(9)(ii).

1.7] Procedure and conditions for closure of proceedings under Section 128A [Rule 164]: Rule 164 is inserted to define the procedure and conditions for closure of proceedings under Section 124A. This rule is inserted w.e.f. 01.11.2024. Following procedure shall be followed in order to avail the benefit of the amnesty scheme of waiver of interest, or penalty or both under Section 128A-

- **Waiver is applicable in specified cases only:** The waiver of interest, or penalty, or both shall be applicable in the following specified cases for the period FY 2017-18,2018-19 and 2019-20-
 - Where notice or statement is issued under Section 73, but an order is issued under Section 73(9)
 - Where order is issued under Section 73(9) but no order is issued by the appellate authority/revisory authority
 - Where order is issued by Appellate Authority/Revisory Authority but no order is passed by the Appellate *Tribunal*.
- **Procedure where the order is not passed under Section 73(9):** - Any person who is eligible for a waiver of interest, or penalty, or both in respect of a notice or a statement mentioned in clause (a) of sub-section (1) of section 128A, may file an application electronically in FORM GST SPL-01 on the common portal. FORM GSTR SPL-01 includes the following details-
 - General Information in Table 1 such as GSTIN, Legal Name, Mobile No etc.
 - Details of notice in Table 2 such as notice or statement number, the Section under which notice is issued, details of writ petition filed if any etc.
 - Details of total demand and details of demand under Section 16(4) in Table 3
 - Details of payment made in FORM DRC-03 in Table 3
 - Declaration in Table 5
 - Verification by the authorised signatory in Table 6
 - Uploading of relevant documents in Table 7 such as a self-certified copy of OIO, proof of payment made in FORM DRC-03, proof of withdrawal of writ petition etc.
- **Procedure where the order is under Section 73(9) or under Section 107 (11) or under 108 (1) but the order under Section 113(1) is not passed:** Any person who is eligible for a waiver of interest, or penalty, or both, in respect of orders mentioned in clauses (b) and (c) of sub-section (1) of section 128A, may file an application electronically in FORM GST SPL 02 on the common portal. The payment of tax liability must be made against the debit entry created in the electronic liability ledger. In case payment is made against such liability, an application in FORM DRC-03A in terms of Rule 142(2B) shall be filed by the said person for credit of said amount against the debit amount in the electronic liability ledger before making an application in FORM GST SPL 02.

In case of multiple orders, a taxpayer has to file separate Applications in FORM SPL-01/02 as the case may be

- **Full payment of tax is needed where demand partially includes demand on account erroneous refund:** As per Rule 164(3) of CGST Rules, where the notice or statement or order mentioned in sub-section (1) of section 128A includes demand of tax, partially on account of erroneous refund and partially for other reasons, an application in FORM GSTR SPL-01/02 may be filed only after payment of the full amount of tax demanded in the said notice or statement or order, on or before the date notified under the said sub-section i.e. 31.03.2025.
- **Full payment of tax needed where demand is made for the period covered and not covered under Section 128A:** As per Rule 164(4) of CGST Rules, full payment of tax is required to be paid where demand of tax is made partially for the period specified under Section 128A and partially for the

other period. Application in FORM GSTR SPL-01/02 may be filed only after payment of the full amount of tax demanded in the said notice or statement or order, on or before the date notified under the said sub-section i.e. 31.03.2025.

- **Amount shall be payable after deducting amount payable under Section 16(4):** The amount payable before filing an application in FORM GSTR SPL-01/02 shall be deducted to the extent amount not payable in terms of Section 16(5) & (6) of CGST Act i.e. Section 16 (4) time limit demand.
- **Time limit for filing an application:** As per Rule 164(6) of CGST Rules, an application in FORM SPL-01 or SPL-02 can be filed within a period of 3 months from the date notified under Section 128A(1) of CGST Act. CBIC vide Notification No. 21/2024 - Central Tax dated 08th October, 2024 has notified 31st March, 2025 as the last date for making payment under Section 128A. Therefore, the application shall be filed within 3 months from 31st March, 2025. However, in the case of redetermination of liability under Section 73 on the direction of Appellate Authority, Tribunal or court which was on the instruction of originally determined under Section 74, the time limit for filing an application shall be 6 months from the date of communication of the order by the proper officer.
- **Application for withdrawal of an appeal is must:** The Applicant is eligible for a waiver of interest only where the applicant has filed an application for withdrawal of appeal or writ petition. The applicant is required to upload the documents evidencing the withdrawal of the appeal or writ petition. It is also clarified that in the case of SLP filed before the Supreme Court required to be withdrawn before filing an application in SPL-01 or SPL-02. A copy of the application or documents filed for withdrawal of appeal or documents shall be filed along with the application where the order of withdrawal is not received. The Applicant shall also be required to upload on the common portal a copy of the order within one month of the issuance of said order.
- **Rejection of application and issuance of SCN:** The officer will reject the application where he is of the view that applicant is not eligible for waiver of interest, or penalty or both as per Section 128A. The proper officer shall issue a notice in FORM GST SPL-03 on the common portal within 3 months from receipt of the application and shall also give opportunity of being heard.

The applicant may file a reply to said notice on the common portal in **FORM SPL-04** within one month from receipt of SCN. The proper officer on satisfaction about the eligibility issue an order in **FORM GST SPL-05** accepting said application and concluding the proceedings. No need to issue an order in FORM GST DRC-07 in such a case against the SCN or statement for which the application for waiver is made.

In respect of the application in FORM GST SPL-02 pertaining to order referred in Section 128A(1)(b)(c) of the CGST Act, the liability created in part II of the Electronic Liability Register shall be modified accordingly.

Where the proper officer is not satisfied with the reply of the applicant, order in FORM GST SPL-07 shall be issued rejecting the said application.

- **Time limit for issuance of an order:** In the case where notice in FORM GST SPL-03 is not issued, the final order shall be issued by the proper officer within 3 months from the date of receipt of application in FORM SPL-01/02. In case where notice is issued in FORM SPL-03, the order shall be issued within 3 months from the date of receipt of reply in FORM SPL-04, or within 4 months from the date of issuance of notice in case no reply is received. The time limit from the date of application for withdrawal of appeal till order of withdrawal shall be excluded from the above period.

The application shall be deemed to be approved when no order is issued within the stipulated time period.

- **Appeal against the order of rejection:** The applicant in the event of rejection of appeal may prefer for the appeal under Section 107 against such order made in FORM SPL-07. If the applicant does not file an appeal against the order passed in FORM SPL-07 within the stipulated period, the original appeal made, if any, shall be restored.

Where the appeal is made against FORM SPL-07, the appellate authority shall pass an order in FORM SPL-06 where the appellate authority held that the proper officer has wrongly rejected

the application for waiver of interest, or penalty or both. Where the appellate authority is of the opinion that the proper officer has rightly rejected the application for waiver of interest, or penalty, or both, the original application shall be restored subject to filing of an undertaking electronically on the common portal in FORM SPL-08 within 3 months from the date of issuance of order by the appellate authority in FORM APL-04 stating that appeal against rejection order shall not be filed.

- **Payment of additional liability:** The applicant is required to pay additional liability as determined by the Appellate Authority or Appellate Tribunal or a court or revisionary authority, as the case may be, within 3 months from the date of such order. In the absence of payment within the stipulated period, the order in FORM SPL-05 or SPL-06 becomes void.

Further, in cases where the taxpayer is required to any interest, or penalty, or both, in respect of any demand pertaining to erroneous refund or demand pertaining to a period other than the period covered under Section 128A, the applicant shall pay such amount within 3 months from the issuance of order in FORM SPL-05/06. In case of non payment within said period order issued in SPL-05/06 becomes void.

[Notification No. No. 20/2024 - Central Tax dated 08th October, 2024]

2] Last date for making payment under Section 128A: 31st March, 2025 is notified as the last date for the payment of tax payable as per the notice or statement or the order referred to in clause (a) or clause (b) or clause (c) of section 128A of the said Act.

In cases where any Appellate Authority or Appellate Tribunal or court concludes that the notice issued under sub-section (1) of section 74 is not sustainable for the reason that the charges of fraud or any wilful-misstatement or suppression of facts to evade tax has not been established against the person to whom the notice was issued, the proper officer requires to determine the tax payable by such person, deeming as if the notice were issued under sub-section (1) of section 73. The time limit in such case shall be six months from the date of issuance of the order by the proper officer redetermining tax under section 73.

[Notification No. 21/2024 - Central Tax dated 08th October, 2024]

3] Special Procedure for rectification of order: A special procedure is notified for rectification of an order where demand was confirmed under Sections 73,74, 107 or 108 on account of wrong availment of input tax credit, in contravention of Section 16 (4) of CGST Act, 2017, but where such input tax credit is now available as per the provisions Section 16(5) or Section 16(6), provided that appeal against said order is not filled. A person rectifying the order is required to follow the following procedure-

- Application for rectification of order shall be filed electronically within six months from 08th Oct, 2024.
- Application shall be filed along with the information in Annexure A. Person applying for rectification of order is required to provide the following information in "Annexure A"
 - Basic details such as GSTIN, legal name, Trade Name, OIO No and date etc.
 - Details of demand confirmed.
 - Details of demand eligible for relief under Section 16(4)
 - Details of demand eligible for relief under Section 16(5)
 - Declaration regarding non-filing of appeal against the order and truthfulness of the information
 - Verification of the information
- The authority who has issued the order shall be the proper officer for carrying out rectification.
- The proper officer as far as possible rectify the order within 3 months from the date of application.
- The proper officer shall upload a summary of the rectified order electronically in FORM DRC-08 where an order is issued under Section 73 or Section 74 Or in FORM GST APL-04 where an order is issued under Section 107 or Section 108.
- The rectification is made only in respect of such demands which are made/confirmed on account of wrong availment of ITC in contravention of Section 16(4).

- Opportunity of being heard shall be given to the applicant where rectification adversely affects such person.

[Notification No. No. 22/2024 - Central Tax dated 08th October, 2024]

4] Late fees on the filing of GSTR-7: Late fees for failure to furnish the return in FORM GSTR-7 for the month of June, 2021 onwards, by the due date in excess of Rs.25/- per day is waived. Maximum fees for such period are restricted upto Rs. 1000/-. Further, it is provided that there shall not be any late fees for the filing of Nil GSTR-7.

[Notification No. No. 23/2024 - Central Tax dated 08th October, 2024]

5] No registration in certain cases: Section 23(2) exempts the category of persons from taking of registration under GST who are only engaged in making supplies of taxable goods or services or both, the total tax on which is liable to be paid on reverse charge basis by the recipient of such goods or services or both under sub-section (3) of section 9 vide Notification No. 5/2017 Central Tax. However, said provisions are not applicable to any person engaged in the supply of metal scrap, falling Chapters 72 to 81 in the first schedule to the Customs Tariff Act, 1975 (51 of 1975)

[Notification No. No. 24/2024 - Central Tax dated 08th October, 2024]

6] Applicability of TDS on Metal Scrap: Any registered person receiving supplies of metal scrap falling under Chapters 72 to 81 in the First Schedule to the Customs Tariff Act, 1975 (51 of 1975), from other registered person is notified as the specified person under Section 51(1)(d) of the CGST Act. Therefore, TDS at the rate of 2% of the value will be deducted by the purchaser from the payment made to the supplier at the time of making payment to the supplier. Further, TDS is made applicable at each stage of the supply.

[Notification No. No. 25/2024 - Central Tax dated 08th October, 2024]

C] Important Circulars

1] Clarification regarding GST rates & classification (goods) : Following clarifications are given in respect of classification and GST rates on certain goods-

- **Extruded or Expanded Savory Food Products:** It is clarified that extruded or expanded savory products (excluding un-fried or uncooked snack pellets) will attract a 12% GST, aligning them with products like namkeens and mixtures under HS Code 1905 90 30. Prior to this date, these products were subject to an 18% GST rate, while un-fried or uncooked snack pellets continue to attract a 5% rate.
- **Roof-Mounted Air Conditioning Units for Railways:** It is clarified that roof-mounted package unit (RMPU) air conditioners used in railways are classified under HS Code 8415, attracting a 28% GST. It is further clarified that air conditioning units are not considered as "parts" under railway equipment (HS Code 8607).
- **Seats for Cars and Motorcycles:** It is clarified that motorcycle seats are classified under HS Code 8714 and attract a 28% GST rate. Car seats, previously taxed at 18%, are now aligned with this rate and will also attract 28% GST.

[Circular No.235/29/2024-GST dt. 11th October, 2024]

2] Scope of as is/as is, where is basis: The meaning of terms as is /as is, where is basis is clarified. It is clarified that in the context of GST, the phrase 'regularized on as is where is' basis means that the payment made at lower rate or exemption claimed by the taxpayer shall be accepted and no refund shall be made if tax has been paid at the higher rate. E.g. In a situation where the interpretational issue is between 5% and 12% rates and some taxpayers have paid 5 % , others have paid 12% while certain taxpayers have not paid GST on supply of "X", and the GST Council recommends to clarify that the applicable rate is 12% and regularize the past on "as is where is basis" which is notified on 1-12-2023, this means that for the period prior to 1-12-2023, the 5% GST paid by taxpayer will be treated as tax fully paid and they

would not be required to pay duty differential between 5% and 12% . For those taxpayers who have paid 12%, no refund would be made. However, the regularization would not apply to situations where no tax has been paid. In such cases, the applicable tax i.e. 12% shall be recovered.

[Circular No.236/30/2024-GST dt. 11th October, 2024]

3] Clarification in respect of Section 16(5) & (6): Clarification is issued in respect of extension of time limit under Section 16(4) in specified cases

[Circular No.237/31/2024-GST dt. 15th October, 2024]

4] Clarification on Section 128A: Clarification is issued on various doubt raised on Section 128A. compensation cess.

[Circular No.238/32/2024-GST dt. 15th October, 2024]

D] Important Instructions

1] Mapping and demapping of officer on GSTN Portal: The instruction is issued to address the need for prompt de-mapping of GST officers from the GSTN portal upon their transfer or reassignment. This directive follows an incident where a GST officer, not de-mapped immediately after being relieved from duty, fraudulently sanctioned a refund. To prevent such occurrences, the Directorate General of Vigilance (DGoV) recommends that officers be de-mapped immediately after executing GFR-33. Supervisory officers, preferably at the rank of Joint Commissioner or Additional Commissioner, are advised to monitor this process and submit compliance reports to the jurisdictional Commissioner or Principal Commissioner within a specified timeframe.

[Instruction No. 04/2024-GST dt. 04.10.2024]

E] Important Case Laws

1] TVL Slitina Metal Sales LLP Vs.Asst.Comm.(ST), Coimbatore- 2024(89) G.S.T.L.25-Madras High Court:-

Input tax credit - Denial of - Tax Paid to supplier not remitted to Government - Assessee received a SCN in respect of two issues i.e. claim of Input Tax Credit in respect of allegedly ineligible commodities as per sub-section (5) of Section 17 of CGST Act, 2017 and claim of ITC for supplies from cancelled dealers, who had not remitted tax to state exchequer - Assessee replied to such notice along with invoice and e-way bills - In impugned order, there was no finding in respect of first issue - With regard to second issue, tax proposal was confirmed on ground that assessee did not establish movement of goods by producing lorry receipts, weighment slips and payments made to supplier - However, none of these documents were called for in SCN which preceded impugned order - **HELD: Impugned order was to be set aside and matter was to be remanded for reconsideration [Section 16 read with Section 17 of Central Goods and Services Tax Act, 2017/Tamil Nadu Goods and Services Tax Act, 2017.**

2] TVL Shivam STEELS Vs.Asst.Com.(ST),Hosur-2024(89) G.S.T.L.40- Madras High Court:-

Input tax credit - Reversal of - Credit notes issued by supplier - Assessee received a show cause notice with regard to reversal of ITC in respect of credit notes issued by supplier - Impugned order was passed thereafter - Assessee submitted that value of supply would not include a discount only if conditions prescribed in clause (a) or (b) of Section 15(3) of CGST Act, 2017 were satisfied - As per assessee, case at hand did not fall within scope of Section 15(3) ibid, thus he contended that credit notes issued by supplier were financial credit notes and assessee was not liable to reverse ITC to extent of value of credit notes - Assessee submitted that in impugned order, discount offered by supplier was erroneously construed as service provided by purchaser to supplier, thus same called for interference - **HELD : Assessing Officer concluded that taxable person was providing a service to supplier while taking benefit of a discount by facilitating an increase in volume of such supplier - Said conclusion was ex facie erroneous and contrary to fundamental tenets of GST law - Impugned order was to be set aside only in so far relating to reversal of ITC for volume of credit notes issued by supplier was concerned and matter**

was to be remanded for reconsideration by original authority [Section 16 of Central Goods and Services Tax Act, 2017/Tamil Nadu Goods and Services Tax Act, 2017].

3]TVL Maurya Hotels(Madras) Pvt. Ltd. Vs. Asst . Com. (ST), Chennai- 2024(89) G.S.T.L.49- Madras High Court-

Interest - Delayed payment of tax - Late filing of returns - Non-consideration of reply to show cause notice - Period 2017-18 - Assessee impugned order in original and consequential recovery notice - Assessee pointed out that it's reply was disregarded while concluding liability to pay interest for belated filing of returns under CGST and SGST Acts - **HELD:** Assessee in reply had stated that interest liability was discharged and assessee also annexed evidence of discharge - In impugned order, though response with regard to payment of interest was referred to, a finding was recorded that interest amount does not tally - On examining assessee's reply with amounts indicated as payable towards interest, it appeared that amounts tallied - Accordingly, impugned order and recovery notice were to be set aside [Section 50 read with Section 73, of Central Goods and Services Tax Act, 2017/Tamil Nadu Goods and Services Tax Act, 2017].

Input tax credit - Denial of - Mismatch between Returns - GSTR 3B returns and auto-populated 2A - Non-consideration of reply to show cause notice - Period 2017-18 - Assessee challenged order in original and consequential recovery notice - Assessee pointed out that it's reply with regard to mismatch between GSTR 3B returns and auto-populated 2A was disregarded - **HELD:** Assessee replied that excess ITC was not availed of and in support assessee attached GSTR 9 return and copies of invoices - Assessee's reply had been completely disregarded and a finding recorded that taxpayer did not reply on this point - Therefore, impugned order and recovery notice were to be set aside [Section 16 read with Section 75, of Central Goods and Services Tax Act, 2017/Tamil Nadu Goods and Services Tax Act, 2017].

4]Unnikrishnan R. Vs. Union of India- 2024 (89) G.S.T.L.56- Madras High Court-

Tax, interest or penalty liability - Deceased person - Period 2017-18 - Petitioner was son of deceased dealer who was running business concern - Show cause notice was issued in name of deceased dealer - Case of petitioner was that although petitioner and other members of family were legal heirs, they were not carrying business - It was submitted that impugned order confirming demand in show cause notice was non-est in law as it had been issued against dead person - **HELD :** Since impugned order had been passed against dead person, same was to be quashed [Section 93 of Central Goods and Services Tax Act, 2017/Tamil Nadu Goods and Services Tax Act, 2017].

5] Gobinda Construction Vs. Union of India -2024(89) G.S.T.L.81-Hon.Supreme Court:-

Input tax credit - Sub-section (4) of Section 16 - Constitutional validity - Passing common order for a number of cases, High Court in Gobinda Construction 2023 (77) G.S.T.L. 483 (Pat.) = (2023) 10 Centax 196 (Pat.) has held that sub-section (4) of section 16 of CGST/BGST Act is constitutionally valid and not violative of article 19(1)(g) and article 300A of Constitution of India - **HELD:** Notice was to be issued in SLP filed by assessee against impugned order [Section 16 of Central Goods and Services Tax Act, 2017/Bihar Goods and Services Tax Act, 2017].

6]National Plasto Moulding Vs.State of Assam- 2024(89) G.S.T.L.82- Gauhati High Court-

Input tax credit - Denial of - Tax paid to supplier not remitted to Government - Petitioner had challenged validity of Sections 16(2)(c) and 16(2)(d) along with show cause notices issued to assessee - Assessee contended that its controversy was squarely covered in case of On Quest Merchandising India (P.) Ltd. v. Government of NCT of Delhi [2018 (10) G.S.T.L. 182 (Del.)], wherein it was categorically held that a purchasing dealer could not be punished for act of selling dealer in case selling dealer had failed to deposit tax collected by it - **HELD :** Following said decision show cause notice issued to assessee was to be set aside and instant writ petition was to be disposed of [Section 16 of Central Goods and Services Tax Act, 2017/Assam Goods and Services Tax Act].

7] Baazar Style Retail Ltd.Vs.Deputy Commissioner of State Tax, Shibpur- 2024(89) G.S.T.L.201 - Calcutta High Court-

State/UT GST Officers - Parallel proceeding with central GST Officers - Period April, 2018 to March, 2019 - Impugned show cause notice was issued for tax period April, 2018 to March, 2019 under

Section 73 by State authorities and adjudication order passed under Section 73(9) of WBGST Act - Demand order was also issued - Ground of assessee was that Central authorities had previously, in respect of same tax period and subject matter, initiated a proceeding by issuing a show cause-cum-demand notice and assessee had duly participated in said proceeding - **HELD** : Taking note of provisions of Section 6(2)(b) of WBGST Act impugned show cause notice and order were to be set aside [Section 6 read with Section 73 of Central Goods and Services Tax Act, 2017/West Bengal Goods and Services Tax Act, 2017.

8] Utpal Das Vs.State of West Bengal- 2024(89) G.S.T.L.230- Calcutta High Court-

Input tax credit - Reversal of - Imposition of interest - Period April 2018 to March 2019 - Assessee was served with a notice in Form DRC-01A, identifying liability inclusive of interest payable by assessee - Assessee responded to said notice admitting that by reason of a clerical mistake in filing GSTR-09, assessee had availed excess ITC - A notice under Section 73 of CGST/WBGST Act, 2017 was issued and same culminated in an order whereby assessee was saddled with interest and penalty - Assessee submitted that upon receipt of Form GST DRC-01, assessee acted on basis thereof and had voluntarily debited its electronic credit ledger by filing Form GST DRC-03, and having done that matter ought to have rested - **HELD**: Proper officer acted with material irregularity in saddling assessee with interest - Impugned order could not be sustained and same was to be set aside [Section 16 read with Section 73 of Central Goods and Services Tax Act, 2017/West Bengal Goods and Services Tax Act, 2017 - Rule 142 of Central Goods and Services Tax Rules, 2017/West Bengal Goods and Services Tax Rules, 2017.

9] Hanuman Industrial Corporation Vs.Govt.of NCT of Delhi-2024(89)G.S.T.L.237- Delhi High Court-

Input tax credit - Denial of - Tax paid to supplier not remitted to government - Show cause notice was issued to assessee alleging that assessee had availed ITC from suppliers who had not paid tax on their outward supplies - Assessee responded to said notice stating that assessee had received supplies from suppliers in question and had paid entire amount due to them - It was asserted that said suppliers were duly registered with GST authorities at material time and GST portal reflected that they had paid taxes on supplies - Impugned order was passed confirming demand - **HELD** : Contentions of assessee was considered and impugned order was passed mechanically confirming liability without specifying if dealers had not paid taxes or had not filed returns at material time - There was no finding that suppliers from whom assessee had availed supplies during material time had not discharged their tax liability by depositing tax with government either in cash or by availing ITCs, as set out in Section 16(2)(c) of CGST Act, 2017 - Impugned order was to be set aside and matter was to be remanded [Section 16 of Central Goods and Services Tax Act, 2017/Delhi Goods and Services Tax Act, 2017.

10] TVL. Annai Earth Movers Vs.Asst.Com.(ST),Chennai-2024(89) G.S.T.L.247- Madras High Court-

Input tax credit - Denial of - Mismatch between GSTR-3B and GSTR-2A - Show cause notice - Violation of natural justice - Tax proposal relating to mismatch between assessee's GSTR-3B return and auto populated GSTR-2A insofar as ITC was concerned, was confirmed vide impugned order on ground that assessee did not reply to show cause notice or attend personal hearing - Assessee asserted that show cause notice and other communications were uploaded in 'view additional notices and orders' tab on GST portal and was not communicated to assessee through any other mode - Assessee submitted that assessee was unaware of proceedings and, therefore, could not contest tax demand - Assessee also submitted that certain amount had been debited from bank account of assessee; protecting interest of revenue - **HELD** : Assessee was to be provided with an opportunity to contest tax demand on merits - Therefore impugned order was to be set aside and matter was to be remanded for passing of fresh order [Section 16 of Central Goods and Services Tax Act, 2017/Tamil Nadu Goods and Services Tax Act, 2017.

11] Mononit Das Vs.State Tax Officer, Cuttak- 2024(89)G.S.T.L.309-Cuttak High Court-

Registration - Revocation of cancellation - Non-furnishing of returns - Condonation of delay - Assessee's registration was cancelled vide impugned order - Assessee submitted that, he was willing to pay tax, interest, late fee, penalty and any other sum required to be paid for return to be accepted by department - **HELD**: Directions were given by co-ordinate bench of court, Mohanty Enterprises v. Commissioner CT & GST [W.P.(C) No.30374 of 2022, dated 16-11-2022], condoning delay after deposit of all taxes, interest, late fee, penalty, etc. - Following above case, assessee was to be given relief

by condoning delay [Section 30 of Central Goods and Services Tax Act, 2017/Orissa Goods and Services Tax Act, 2017.

12]Sagar Brush Industries Vs.State Tax Officer,Madurai- 2024(89)G.S.T.L.350- Madras High Court-

Input tax credit - Denial of - Belated claim - Period 2017 to 2021 - Assessee challenged assessment orders seeking to deny ITC availed by respective assessee belatedly beyond statutory period prescribed under Section 16(4) of CGST/TNGST Act, 2017 - Said orders were also affirmed by Appellate Authority - **HELD** : It was noted that Finance (No.2) Bill, 2024, wherever there was delay in availing ITC for assessment years 2017-18 upto 2020-21, Parliament had extended an olive branch to taxpayers in terms of proposals contained in Finance Bill ibid, which sought to amend provisions of Section 16(4) by adding sub-sections (5) and (6) - Since parliament itself came to rescue of assessee, impugned orders passed by original authority as well as appellate authority were to be set aside and cases were to be remitted to pass fresh order on merits [Section 16 of Central Goods and Services Tax Act, 2017/Tamil Nadu Goods and Services Tax Act, 2017.

13]Molana Construction Co.Vs.CGST Department,Jaipur- 2024(89) G.S.T.L.353-Rajasthan High Court-

Appeal to Appellate Authority - Limitation - Writ jurisdiction - Appeal filed by assessee was dismissed as barred by limitation vide impugned order - In instant writ petition assessee sought High Court to condone delay - **HELD** : Provisions under CGST Act besides seeking levy and calculation of taxes are also intended to facilitate commercial and business activities - Provisions under Section 107 of CGST Act cannot be frustrated on mere technicalities - A right to appeal as provided under statute must be decided on merits irrespective of some laches or delay on part of assessee - This is by now too well-settled that statutory provisions of limitation under Section 107 of CGST Act would bind statutory authority and it cannot condone delay except circumstances envisaged thereunder but such limitations are not applied to High Court in a writ proceeding as powers under Article 226 of Constitution of India are founded on justice, equity and good conscience and are exercised for public good - Language employed in Asstt. Commissioner (CT) LTU v. Glaxo Smith Kline Consumer Health Care Ltd. [2020 (36) G.S.T.L. 305 (S.C.)] reflects that High Court has ample power to condone delay in preferring appeal, in view of said SC Judgment in Glaxo Smith Kline Consumer Health Care's case, whereby it was held that High Court has ample power to condone delay in preferring appeal, instant writ petition of assessee before instant High Court, was to be allowed - Appeal was to be restored [Section 107 of Central Goods and Services Tax Act, 2017/Rajasthan Goods and Services Tax Act, 2017.

F] GST portal updates

1] GSTN e-Services App to Replace e-Invoice QR Code Verifier App Shortly: The new GSTN e-Services app has been launched, replacing the old e-Invoice QR Code Verifier App. Key features include:

- e-Invoice Verification: Scan QR codes to verify B2B e-Invoices and check the Invoice Reference Number (IRN) status.
- GSTIN Search: Look up GSTIN details by GSTIN or PAN.
- Return Filing History: View a GSTIN's return filing history.
- Multiple Input Options: Enter search details by text, voice, or scan.
- Result Sharing: Share search results directly from the app.

The app will soon be available on Google Play and the App Store, with no login required. A user manual will be provided shortly.

2] Advisory on Proper Entry of RR No./Parcel Way Bill (PWB) Numbers in EWB system Post EWB-PMS Integration: The Indian Railways Parcel Management System (PMS) has been integrated with the E-Way Bill (EWB) system, allowing seamless transfer of RR No./Parcel Way Bill (PWB) data. Taxpayers transporting goods by rail must follow these guidelines:

- **Applicability:** Taxpayers using the Parcel Management System must enter the correct Parcel Way Bill (PWB) or Railway Receipt (RR) number in the EWB Part-B.

- **Updating Part-B:** For goods transported from factory to railway station and then by rail, use the "Multi-Transport Mode" on the EWB portal, select "Rail" as the mode, and enter the RR No./PWB.
- **Format for Entry:** Enter the RR No./PWB in the format "PXXXRRNo" (e.g., PNZM2020-307306), where:
 - P = Parcel Management System,
 - XXX = originating station code, and
 - RRNo = Railway Receipt number.
- **For FOIS or Leased Wagons:** Enter RR numbers exactly as shown in the receipt.
- **Validation:** The EWB system validates the RR No./PWB against PMS data. Alerts will be generated for mismatches.
- **Importance of Accuracy:** Accurate entry ensures smooth tracking and validation, preventing delays.
- **Assistance:** For discrepancies, contact the support team with the specific RR No./PWB details.

This integration improves traceability and compliance for goods transported via Indian Railways.

3] Advisory for Taxpayers: New GST Provision for Metal Scrap Transactions: The government has issued Notification 25/2024-Central Tax, on October 9, 2024, under GST Section 51 of the CGST Act, 2017 mandating compliance by the businesses dealing with Metal Scrap. The GST portal will soon be updated to enable compliance of registration through FORM GST REG-07 by these category of registered persons.

4] Invoice Management System: Invoice Management System (IMS) is made available to taxpayers from Today, 14th Oct, 2024. The new system shall facilitate taxpayers in matching their records/invoices vis a vis issued by their suppliers for availing the correct Input Tax Credit (ITC). Taxpayers can make use of this system to take action on the invoices reflecting on IMS from 14th Oct, 2024. The first GSTR-2B would be generated for the return period Oct'24 on 14th November, 2024 considering action taken on Invoice Management System. It may be noted that it is not mandatory to take action on invoices in IMS dashboard for GSTR-2B generation.

5] Important advisory for GSTR-9/9C: Starting FY 2023-24, GST system will auto-populate eligible ITC for domestic supplies (excluding reverse charge and imports ITC) from table 3(I) of GSTR-2B to table 8A of GSTR-9. These changes in GSTR-9 and 9C for the FY 2023-24 will be available on the GST portal from today i.e., 15th October 2024 onwards.

Further, a validation utility will be executed progressively (for validation by taxpayers) to complete the auto population of GSTR-9 from GSTR-2B for Apr-23 till Mar-24.

6] Locking of auto-populated liability in GSTR-3B: To improve the GST return filing process and reduce errors, GSTN has introduced the following features:

- **Pre-filled GSTR-3B:** Tax liability is auto-populated from GSTR-1/1A/IFF and Input Tax Credit (ITC) from GSTR-2B, providing taxpayers with a pre-filled GSTR-3B form and a detailed PDF.
- **Amendments and ITC Management:** Taxpayers can correct any errors in GSTR-1/IFF via GSTR-1A before filing GSTR-3B. Additionally, the new Invoice Management System (IMS) allows taxpayers to accept, reject, or mark invoices as pending to manage ITC claims accurately.
- **Restriction on Changes:** Starting January 2025, changes to auto-populated liabilities in GSTR-3B from GSTR-1/1A/IFF will be restricted. Corrections should be made through GSTR-1A.
- **ITC Locking:** Auto-populated ITC in GSTR-3B will be locked in a future update, following the IMS rollout, with a separate advisory to be issued after resolving any IMS-related concerns raised by taxpayers.

7] Validation of bank account details while adding bank account as Non Core amendment: GSTN has implemented a validation process for cases where a taxpayer attempts a non-core amendment to update bank account details. Taxpayers are requested to follow the procedure outlined in the link provided below while adding bank account details on the portal.

8] Registration by the metal scrap purchaser: GSTN has introduced an update to facilitate the registration compliance for buyers of metal scrap through form GST REG-07. This update follows the new GST provisions for metal scrap buyers as outlined in the advisory issued on October 13.

Taxpayers in this category are required to select "Others" in Part B of Table 2 under the "Constitution of Business" section. A text box will appear where the taxpayer must enter "Metal Scrap Dealers." This entry is mandatory for those selecting the "Others" option. Once this is completed, the remaining details in form GST REG-07 should be filled and submitted on the common portal to meet the registration requirements as per Notification No. 25/2024 - Central Tax, dated October 9, 2024.

9] Barring of GST Return on expiry of three years: As per the Finance Act, 2023 (8 of 2023), dt. 31-03-2023, implemented w.e.f 01-10-2023 vide Notification No. 28/2023 - Central Tax dated 31st July, 2023, the taxpayers shall not be allowed file their GST returns after the expiry of a period of three years from the due date of furnishing the said return under Section 37 (Outward Supply), Section 39 (payment of liability), Section 44 (Annual Return) and Section 52 (Tax Collected at Source). These Sections cover GSTR-1, GSTR 3B, GSTR-4, GSTR-5, GSTR-5A, GSTR-6, GSTR 7, GSTR 8 and GSTR 9.

The said changes are going to be implemented in the GST portal from early next year (2025). Hence, the taxpayers are advised to reconcile their records and file their GST Returns as soon as possible if not filed till now.

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