

GST Updates

1. 53rd GST Council meeting to be held on 22nd June, 2024

Source: The Hindu publication dated 13th June 2024

Likely Agenda

The agenda for the upcoming meeting may be to flag suggestions for the upcoming Union Budget to be presented next month and which may inter-alia also cover

- Review of the existing multiple GST rates and simplify the tax structure to reduce complexity and improve compliance;
- Review of 28% GST levy on online gaming, casinos, and horse racing after industry uproar over potential losses;
- Future of the GST Compensation Cess which was originally meant to be levied for the first five years of the GST regime;
- Status of the progress made by different states/UTs in setting up GSTATs and discuss further steps;
- Clarifications in relation to the refunds to fertilizer companies as a result of the inverted duty structure and subsidy which has recently raked up a lot of litigations.

2. Gross GST revenue collection in May 2024

Source: Press Release form the Ministry of Finance, dated June 1, 2024.

Ministry of Finance had issued a Press release dated June 1st, 2024, regarding gross GST revenue.

Highlights:

The gross Goods and Services Tax (GST) revenue for the month of May 2024 stood at ₹1.73 lakh crore. This represents a 10% year-on-year growth, driven by a strong increase in domestic transactions (up 15.3%) and slowing of imports (down 4.3%). After accounting for refunds, the net GST revenue for May 2024 stands at ₹1.44 lakh crore, reflecting a growth of 6.9% compared to the same period last year.

Breakdown of May 2024 Collections:

- Central Goods and Services Tax (CGST): ₹32,409 crore;
- State Goods and Services Tax (SGST): ₹40,265 crore;
- Integrated Goods and Services Tax (IGST): ₹87,781 crore, including ₹39,879 crore collected on imported goods;
- Cess: ₹12,284 crore, including ₹1,076 crore collected on imported goods.

3. Advisory on launch of E-Way Bill 2 Portal.

Source: Advisory from the Goods and Services Tax Network, dated May 28, 2024.

The Goods and Services Tax Network has issued an advisory regarding launch of E-Way Bill 2 Portal.

Highlights:

GSTN is pleased to inform that NIC is releasing the **E-Way Bill 2 Portal** (<https://ewaybill2.gst.gov.in>) on 1st June 2024. This portal ensures high availability and runs in parallel to the e-way Bill main portal (<https://ewaybillgst.gov.in>). The e-way bill 2 portal synchronises the e-way bill details with main portal within a few seconds. The highlights of the portal are as follows:

- Presently, E-Way Bill 2 Portal provides the critical services of E-Way Bill system, and gradually it will be extended with other services of e-way bill system.
- E-Way Bills can be generated and updated on the E-Way Bill 2 Portal independently.
- E-Way Bill 2 portal provides the web and API modes of operations for e-way bill services.
- The taxpayers and logistic operators can use the E-Way Bill 2 portal with the login credentials of the main portal.
- The Criss-Cross operations of printing and updating of Part-B of E-Way Bills can be carried out on these portals. That is, updating of Part-B of the E-Way bills of portal 1 can be done at portal 2 and vice versa.



4. Unified database likely to tackle GST evasion.

Source: Financial Express, [29 May 2024](#)

THE CENTRAL BOARD of Indirect Taxes and Customs (CBIC) is mulling merging its existing database of DG (Systems) with that of Goods and Services Tax Network (GSTN) to expand its coverage of taxpayer activities and curb tax evasion.

The merger is taking place mainly because the CBIC intends to curb tax evasion. In FY24, the Directorate General of GST Intelligence (DGGI) detected over 6,074 cases involving evasion of duty of over 2.01 trillion. It is approximately 10% of the total GST collection in FY24, with a voluntary payment of ₹26,598 crore, which accounted for 1.4% of the total collection. In FY23, as many as 4,872 cases of GST evasion were detected involving duty of ₹1.01 trillion, with voluntary payment of 20,713 crore, according to official data.

The GSTN has been established as a uniform IT interface between the taxpayer, Centre and states. Its functions include facilitating registration, filing of returns, forwarding the returns to central and state authorities, and computation and settlement of Integrated GST. Whereas, the Directorate General (Systems & Data Management), or DG (Systems), has been set up to infuse technology in the departmental processes. It seeks to provide data support to the CBIC and field formations by compiling and disseminating data pertaining to tax collection and related activities such as adjudication, appeals and court cases.

The merger of the two data-bases will help central and state GST officers to coordinate better while tracking down tax evaders.

GST Litigation Alerts

1. Proceedings cannot be initiated against dissolved company or its erstwhile directors ¹

- ✓ In the instant case, the Petitioner challenged the issuance of the show cause notice and passing of the adjudication order proceedings under the provisions of CGST Act before the Karnataka High Court that was issued after the company had been dissolved / liquidated under Section 59(8) of the IBC Act.
- ✓ The final dissolution order of M/s. Hitachi Nest Control Systems Pvt Ltd was passed by the NCLT on 15.02.2023 from which date the entity became non-existent. Further, GST registration of the petitioner stood cancelled pursuant to the application for cancellation issued prior to dissolution. Thereof, it was contended by the Petitioner that the impugned show cause notice issued subsequent to 15.02.2023 and adjudication order are without jurisdiction or authority of law and the same are void.
- ✓ It was held by the Hon'ble High Court that initiating assessment against a 'non-existing' / 'dead person' is not merely a procedural defect which can be cured but a jurisdictional defect. It was also held that the Tax authorities do not have the jurisdiction to initiate tax assessment against a 'non-existing' entity dissolved under Section 59(8) of the IBC Act.

2. GST demand based on all-India turnover and comparing GSTR-3B with Form 26AS ²

- ✓ In the instant case, the Books of accounts of Petitioner for assessment period 2017-2018 was audited for which he received audit observations which principally pertain to turnover reconciliation and variation between the GSTR 3B return and Form 26AS.
- ✓ The petitioner responded that the turnover pertains to the petitioner's business across India under multiple GST registrations and also indicated that there was duplication between the observation relating to turnover reconciliation and comparison of GSTR 3B returns and Form 26AS which constituted a major portion of the tax demand as per observation of the learned counsel.

¹ 2024-VIL-480-KAR

² 2024-VIL-485-MAD

- ✓ After audit intimation, SCN was issued and subsequently order dated 25.12.2023 was passed which was challenge in the writ petition before Hon'ble Madras High Court.
- ✓ Hon'ble Madras HC observed that that the tax demand was confirmed against the petitioner by taking into account the total turnover from the petitioner's profit and loss account. It also observed that prime facie that there could be duplication as between the head relating to turnover and the head relating to the differences between the GSTR 3B return and Form 26AS and provided another opportunity to petitioner to contest the SCN.

3. GST audit can be conducted even after cancellation of registration ³

- ✓ In May, 2024, the High court held that Section 29(3) of the CGST Act clearly mandates that the cancellation of registration shall not affect the liability of the person to pay tax and other dues under this Act or to discharge any obligation. Section 65(1) of the CGST Act also authorizes the Authority to undertake audit of any registered person for such period.
- ✓ In the instant case, the petitioner who was a registered person had applied for cancellation which was allegedly done after fraudulently availing the ITC and registration was cancelled on 16.01.2020. Petitioner was served with notice dated 06.03.2023 to initiate audit and also show cause notice dated 01-06-2023 issued and subsequently assessment order dated 30.11.2023 was also passed for such alleged ITC availment. The above proceedings challenged by the Petitioner before Rajasthan High Court.

- ✓ Petitioner's argument was that authorities can undertake audit of a registered person only under Section 65 and since his registration was cancelled on 16.01.2020, he is no more a registered person liable for audit.



- ✓ Hon'ble Court held that Section 29(3) of the CGST Act clearly mandates that the cancellation of registration under this section shall not affect the liability of the person to pay tax even after cancellation, the registered person is required to pay the tax. Section 65 of the CGST Act also empowers authorizes the Authority to undertake audit of any registered person for such period for initiating proceedings.

- ✓ It was also held that there was no error in the proceedings initiated by Department as registered person under Section 65 of the CGST Act would include those who were registered for the period for which audit was undertaken.

4. General Clauses Act applicable to exclude the first day ⁴

- ✓ In present case, the petitioner was granted registration certificate under the UPGST Act which was cancelled by the Revenue authorities vide order dated April 19, 2022. Thereafter, the Petitioner filed an application for revocation of the cancellation of registration before the above authority which was rejected vide impugned order dated July 12, 2022. The Petitioner filed an appeal against the said order which was dismissed vide order dated November 24, 2022 as the said appeal was time barred.

³ 2024-VIL-488-RAJ

⁴ 2024-VIL-506-ALH

- ✓ Aggrieved by the above orders, Petitioner challenged the same before the Allahabad High Court.
- ✓ Petitioner contended that the appeal filed under Section 107 of the UPGST Act was rejected on the ground that the same had been filed one day after the expiry of limitation and by treating 4 months as 120 days but the fact is that petitioner has been filed within time on November 10, 2022. According to Section 9 of the General Clauses (GC) Act, 1897 when calculating the limitation period "from" the date of communication of the order, the day on which the order is communicated is excluded.
- ✓ Hon'ble High Court held it is that three months period would have begun on July 13, 2022 and expired on October 12, 2022 and the extended period would have expired on November 12, 2022. Thus, the calculation done by the authorities is incorrect which warrants the exercise of writ jurisdiction which becomes particularly relevant when there are discrepancies in the calculation of statutory timelines apparent on record and aggrieved parties have right to seek judicial intervention.