



# **GST BULLETIN**

**AUGUST 2023**

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# JUDICIAL UPDATES

## 1. Loan granted to the credit card holder is a loan-simpliciter, therefore, interest on such loan is not leviable to GST

**Case of :** Ramesh Kumar Patodia

**Decision by :** Calcutta High Court

**Date of Judgement :** 25th July 2023



- The Ramesh Kumar Patodia (Assessee) applied for the loan offered by the Bank to cardholder, payable in 12 EMIs, and had entered into an agreement borrowing the loan amount. The EMIs payable (comprising principal and interest amounts) were reflected in the Cardholder's credit card statement.
- Further, on such interest amounts, the Bank had charged IGST to the assessee, which was duly paid. However, aggrieved by the imposition of GST on interest on a loan, the assessee filed a Writ Petition before the Hon'ble Calcutta High Court seeking a clarification that the transaction inter se between the Cardholder and the Bank would be exempt from the levy of GST.

- Challenging the IGST levy, the assessee contended that as per the exemption notification's Sl. No. 28 certain categories of services except interest levied in respect of credit card services are exempt from GST. Thus, interest on credit card services would be leviable to GST.
- Assessee further argued that even though possession of the credit card entitled him to be offered the loan advancement of the loan had nothing to do with the credit card or the service as it was an independent agreement for the loan and hence, the interest charged on the loan was not on account of the loan advanced by use of credit card. As a result, interest charged on loan is not leviable to GST in the present case.
- Further, installment amount was reflected in the credit card statement only for the purpose of payment of EMI and there was a reference to a distinct Loan Reference number.
- Assessee also draws the comparison between the credit card services as per section 65(33A) of the Finance Act, 1994 and contends that bank cannot treat the interest on loan as credit card service charge liable to IGST
- Bank on the other hand contended that once the assessee accepted the condition of payment of IGST at the time of accepting the Loan, he could not retreat from such acceptance and the assessee was granted a loan as he holds a credit card. Hence, granting of the loan was a part of the credit card services rendered by the Bank to the Cardholder.
- HC observes that as regards the Bank's contentions that the assessee had accepted the terms and conditions, it was observed that it is a well-settled principle that mere acceptance of a condition prohibited by law does not make the said condition enforceable in law
- HC further added that if the loan was advanced to the assessee through the use of the card, then one could have understood that the service was related to the card. However, in the present case, the loan amount was advanced by a cheque or draft issued by the bank and not by charging the Cardholder's card.
- With regard to the monthly statement of account of card indicating the loan amount with EMI payable, HC opines "it was only a statement of account" and "loan transaction had to be taken as an altogether separate transaction" with no "relationship with the relationship between the appellant and the bank arising out of issue.
- The Exemption Notification would apply to interest on all transactions coming under the category of loan. Since the Bank granted the loan to the assessee repayable with interest, it is to be treated as a loan simpliciter and cannot be equated with a credit card services.

- Accordingly, the transaction in question cannot be treated as 'credit card services' and hence, GST is not leviable on interest charged in respect of such loan.



## Full Judgement : [Ramesh Kumar Patodia](#)

### ***SNR's Take***

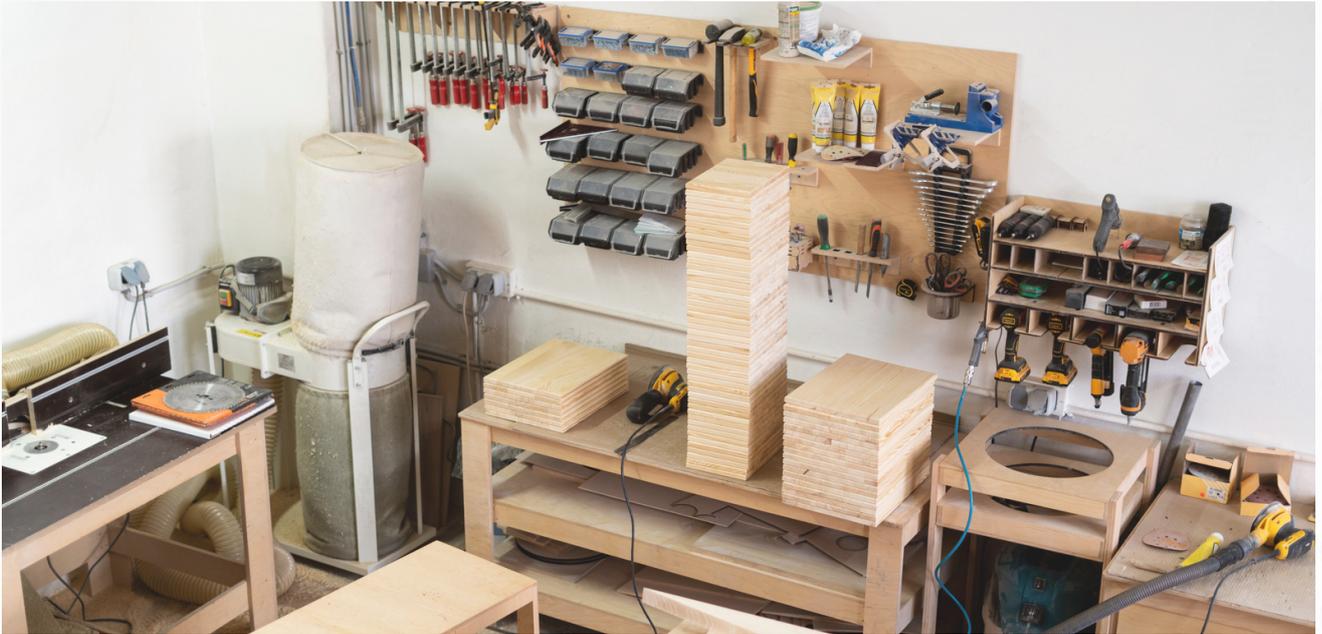
High court makes a distinction between loans provided to credit card holders and credit card services and reasonably, held that exemption notification would apply to all types of loans. Just because loan is provided to a credit card holder does not convert a loan into credit card services and therefore, has correctly upheld that GST is not leviable on interest on loan given to credit card holder.

## 2. Section 16(4) does not override section 16(2), both are independent of each other.

**Case of :** Tirumalakonda Plywoods

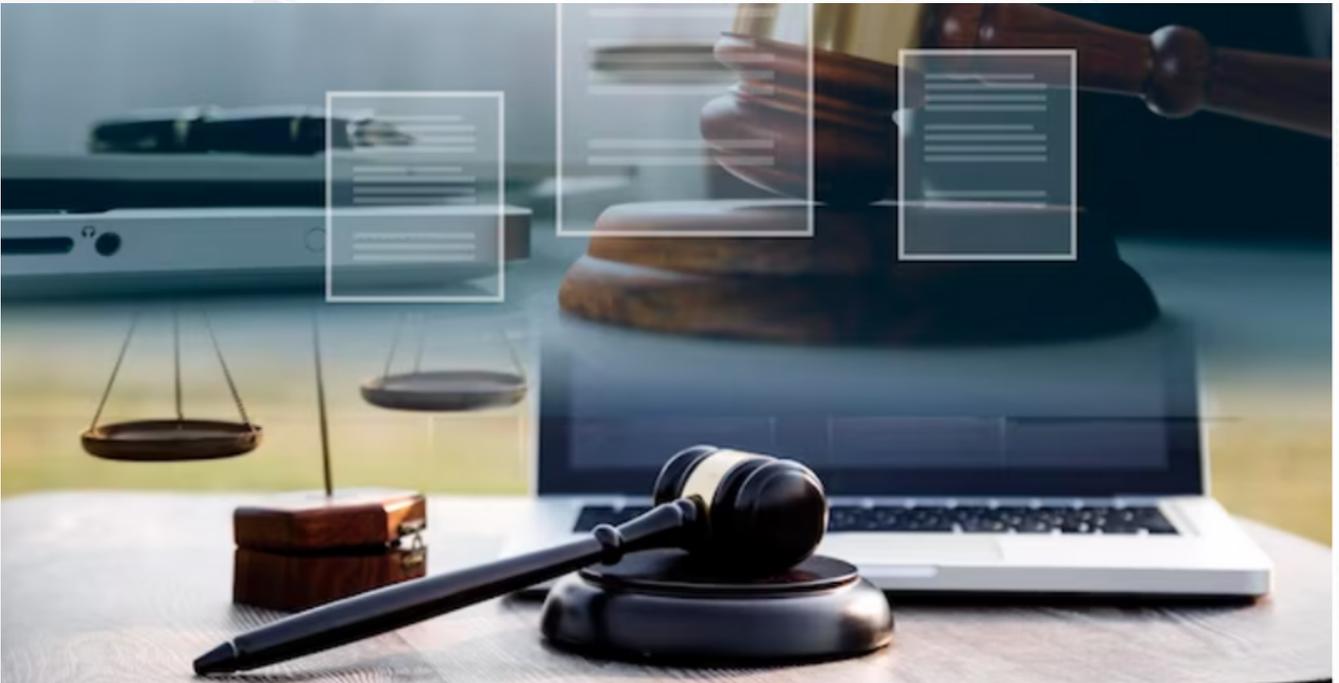
**Decision by :** Andhra Pradesh High Court

**Date of Judgement :** 18th July 2023



- Assessee is a sole proprietorship doing business in hardware and plywood with the trade name "Tirumalakonda Plywoods" commenced during Covid-19 pandemic and registered under APGST Act and CGST Act during March, 2020.
- Assessee, could not file its return within the prescribed time or the time-limit prescribed under section 16(4) of GST Act.
- Assessee argued that since GSTR-3B of March 2020 was filed on November 27, 2020, and was accepted with a late fee, such acceptance will exonerate the delay in filing return u/s 16(4) and therefore along with his return, the ITC claim should also be considered.
- Assessee further claimed that Revenue without issuing any SCN in proper form and without considering the reply, sent the summary of the order dated March 15, 2022, whereunder, unjustly making a demand disallowing the ITC towards tax, interest, and penalty u/s 74 of CGST Act, 2017.

- Assessee filed a writ petition for declaring Section 16(4) of APGST Act, 2017 and CGST Act that imposes a time limit for claiming ITC, as violative of Article 14, 19(1)(g) and Section 300-A of Constitution of India.
- Revenue contended that the assessee can claim ITC subject to fulfillment of conditions stipulated u/s 16 of CGST Act read with Section 20 of IGST Act and the claim made through GSTR 3B return filed after prescribed date was not valid.
- Revenue argued that it is false to contend that the reply filed by the Assessee was not considered before passing the impugned order. Articles 14, 16 and 19(1)(g) of the Constitution of India have no relevancy to the case on hand.
- HC strictly opined that mere filing of the return with a delay fee will not act as a springboard for claiming ITC and added that collection of late fee is only for the purpose of admitting returns for verification of taxable turnover but not for consideration of ITC by revenue.
- Dismissing assessee's writ, HC ruled that, Section 16(1) is an enabling clause for ITC while Section 16(2) subjects such entitlement to certain conditions, Section 16(3) and (4) further restrict the entitlement given u/s 16(1) and "That being the scheme of the provision, it is out of context to contend that one of the restricting provisions overrides other two restrictions".
- HC stated that "Before examining the effect of Section 16(2) and (4) of the APGST/CGST Act it is relevant to ruminate the cardinal principle of interpretation". HC outlines that "even if an assessee passes basic eligibility criteria imposed under section 16(2), still he will not be entitled to claim ITC if his case falls within the limitations prescribed under sub-sections (3) and (4)".
- HC further observed that unless such clear inconsistency is established, an overriding effect cannot be given over other provisions. In the present case, both Section 16(2) and (4) are two different restricting provisions, the former providing eligibility conditions and the later imposing a time limit. However, both these provisions have no inconsistency between them.
- Andhra Pradesh HC held that time-limit prescribed for claiming ITC as prescribed u/s 16(4) of CGST Act, 2017 is not violative of Articles 14, 19(1)(g) and 300-A of Constitution of India and Section 16(4) will not be overridden by non-obstante provision u/s 16(2) as both are not contradictory with each other but operate independently.



## Full Judgement: [Tirumalakonda Plywoods](#)

### ***SNR's Take***

High Court has held that mere acceptance of GSTR-3B returns with late fee will not exonerate the delay in claiming Input Tax Credit ("ITC") beyond the period specified under section 16(4). Section 16(2) and 16(4) are independent of each other and are not contradictory to each other, one provides for the time limit and other section provides condition for availing ITC.

### 3. ITC admissible on supply for which payment is made through book-adjustment.

**Case of :** Paragon Polymer Products Pvt Ltd.

**Decision by :** Kerela Authority for Advance Ruling

**Date of Judgement :** 2nd March 2023

- M/s. Paragon Polymer Products Pvt. Ltd. is engaged in the business of manufacturing and trading of footwear and outsources a section of its manufacturing activities to its vendors. Raw material to vendor is supplied by applicant under tax invoice (Supply A). The vendors undertake the manufacturing activity and supply the finished goods to the Taxpayer under tax invoice (Supply B).
- The payment for the same is made by the Taxpayer to the vendors by adjusting the amounts receivable from the vendors for Supply A and the amounts payable to the vendors for Supply B and only the net amount is paid through bank transfer.
- Applicant approached the Authority for Advance ruling (AAR) to seek clarification on the eligibility to avail ITC in respect of goods purchased from the vendors when payment for the same is settled through book-adjustment.
- As per 2nd Proviso to section 16(2) of CGST Act, it is mandatory to make payment to the supplier by recipient for the supply within 180 days from the date of invoice otherwise, ITC claimed by recipient shall be added to his output tax liability along with interest.



- Applicant contended that apart from the proviso of Section 16(2), the GST Act nowhere makes availing of input tax credit dependent upon the payment to be made for inward supply. Moreover, the aforesaid proviso does not prescribe/restrict the mode in which the payment must be made.
- Applicant further contended that definition of consideration under section 2(31) of the CGST Act casts the definition so wide that almost no form of payment is excluded from its ambit. The definition includes within its ambit, any payment made or to be made, whether in money or otherwise and also includes the monetary value of any act of forbearance.
- Para 42 of the Indian Accounting Standard 32 provides that a financial asset and a financial liability shall be offset, and the net amount shall be presented in the Balance Sheet when an entity (a) Has a legally enforceable right to set off the recognised amounts and (b) Intends to either settle such asset and liability on a net basis or realise the asset and the liability simultaneously.
- AAR observes that the proviso clearly limits the recipient's entitlement to input tax credit only to transactions where he has paid the consideration for the supply received, along with the tax payable thereon.
- The definition of 'consideration' includes, in relation to the supply of goods or services, any payment made or to be made, whether in money or otherwise, and also the monetary value of any act or forbearance. Accordingly, the aforesaid definition covers any form of payment within its ambit. Therefore, acceptance of a reduction in debt liability as a valid form of payment can be treated as a valid 'consideration' for a supply.
- Therefore, on reading of section 2(31) along with explanation 2 to Section 12(2), Section 12(3)(b), Explanation (ii) to Section 13(2) and Section 13(3)(a) of the CGST Act, it is evident that settlement of mutual debts through book adjustment by the Taxpayer is a valid mode of payment of consideration for the receipt of goods/services and satisfies the requirement of the second proviso to Section 16(2) of the CGST Act.
- AAR held that accordingly, ITC is admissible when consideration is paid through book adjustment subject to other conditions and restrictions provided under Sections 16, 17 and 18 of the CGST Act and the rules made thereunder.



## Full Judgement: [Paragon Polymer](#)

### ***SNR's Take***

The Kerala AAR has reiterated wide scope of 'consideration' which would include such book adjustments also which has the impact of reducing the debt of a party and thereby the condition of second proviso of Section 16(2) stand satisfied regarding payment within 180 days from the date of issue of invoice by supplier.

## 4. Used/Second-hand Gold or Gold Jewellery cannot pass the test of second-hand goods and valuation as per Rule 32(5) not applicable

**Case of:** Best Money Gold Jewellery Ltd

**Decision by:** Kerela Authority for Advance Ruling

**Date of Judgement:** 2nd March 2023



- M/s. Best Money Gold Jewellery Ltd (applicant) is engaged in the business of buying and selling old/used / second-hand gold jewellery/ ornaments from unregistered persons.
- The applicant sells these second-hand goods 'as such' to the end customers without making any further processing except for some minor processing in the form of cleaning and polishing but without altering the nature of such ornament/ jewellery.
- Applicant seeks advance ruling on whether GST is to be paid only on the difference between the selling price and purchase price as stipulated in rule 32(5) of CGST rules as the applicant purchase used/second-hand jewellery from an unregistered person and sell it further without making any change in the form/nature of the goods and no ITC was availed at the time of purchase.
- Applicant contended that they buy gold from unregistered individuals who are from the general public, and the ornaments they purchase are sold to end users "as such." meaning that they are sold to another registered person without any further processing, except for minor cleaning and polishing that does not alter the nature of the ornament or jewellery.

- Rule 32(5) provides that where a taxable supply is made by a person dealing in second-hand goods, then the value of supply shall be the difference between selling price and the purchase price. Such presumptive schemes are brought for trade facilitation.
- Applicant further contended that the applicant satisfies all the conditions of Rule 32(5) as follows:
  1. Input tax credit (ITC) not claimed on purchases made
  2. Goods sold either 'as such' or 'with minor modifications'
- AAR analyses whether gold is a commodity whose value changes with the change in ownership and added further that, the value of gold will not diminish even if exchanged among 10 different users. The concept of depreciation is not applicable in case of gold and gold jewellery as time/duration of use does not affect the value of the gold.
- AAR further added, "the term 'second hand' does not hold any meaning when it comes to items such as gold, land, currency, etc." and remarks "gold in any form fails to pass the test of second-hand goods.
- Thus, Kerala AAR states that "dealing with exchange of gold cannot be construed as dealing in second hand goods and the rule 32 (5) is not applicable and section 15 of the CGST Act, 2017, holds good"

## **Full Judgement: [Best Money Gold Jewellery Ltd](#)**

### ***SNR's Take***

In the captioned ruling, the Kerala AAR has considered the specific nature of gold as a product and held that due to the nature of gold, it can never be second-hand. AAR further stated that the value of gold ornaments increases with the passage of time. AAR has neither commented nor taken cognizance of multiple AAR rulings pronounced earlier wherein the benefit of rule 32(5) was extended in similar cases. Further Maharashtra AAR in Safset Agencies has extended the benefit to auctioneer dealing in antique products as well, thus, to say that gold ornaments would become antique and valuable with the passage of time and thus is not second-hand also does not sound logical.

# CIRCULARS/NOTIFICATIONS:

## 1. No interest u/s 50(3) on wrong availment of IGST credit if the aggregate balance in electronic credit ledger is more than wrongly availed ITC (Circular – 192/04/2023).

In case of wrong availment and subsequent reversal of IGST credit, for applicability of interest u/s 50(3), it needs to be seen whether the aggregate balance in the electronic credit ledger (ECL) of IGST, CGST, and SGST/UTGST has fallen below such wrongly availed ITC or not. In case, the aggregate balance has been more than the wrongly availed ITC, then no interest would be payable. However, if the aggregate balance is lower than the wrongly availed ITC, then interest would be payable on a differential amount. Further, it is clarified that the balance of the GST compensation cess in ECL would not be included in above specified interest.

**Read Circular:** [Circular No- 192/04/2023](#)

## 2. CBIC extended the applicability of the procedure for dealing with differences between ITC availed in GSTR-3B and GSTR-2A (Circular No 193/05/2023).

Through this circular, CBIC has extended the applicability of the procedure for dealing with differences between ITC claimed in GSTR-3B and as available in GSTR-2A specified through Circular No 183/15/2022-GST dt 27/12/2022 to the period 1 st April 2019 to 31 st December 2021. However, it has been stated that since rule 36(4) was made operational w.e.f. 9 th October 2019 inter alia permitting only specified additional credit (20%/10%/5% of eligible credit) over and above ITC available in GSTR-2A, Thus, even after complying the procedure as per circular 183/15/2022, only following additional ITC can be claimed over and above credit reflected in GSTR-2A:

- a) 1st April 2017 to 8th October 2019 – Without any limit
- b) 9th October 2019 to 31st December 2019 – 20% of eligible credit as per GSTR- 2A
- c) 1st January 2020 to 31st December 2020 – 10% of eligible credit as per GSTR- 2A
- d) 1st January 2021 to 31st December 2021 – 05% of eligible credit as per GSTR- 2A

**Read Circular:** [193/05/2023](#)



### **3. Clarification regarding TCS liability u/s 52 in case of multiple E-commerce operators in one transaction (Circular No – 194/06/2022).**

In the event of multiple E-commerce operators (ECO) in a single transaction, the following clarification has been issued to determine the ECO responsible for collection of TCS:

- Where the supplier side ECO himself is not the supplier and finally releases the payment to the supplier, then this supplier side ECO shall be required to comply with compliances under section 52 including collection of TCS. In this case, buyer-side ECO would not be required to do any compliance u/s 52 or to collect TCS.
- Where the supplier side ECO himself is the supplier then the buyer side ECO shall be required to comply with compliances under section 52 including collection of TCS while releasing payment to such supplier side ECO.

**Read Circular: [194/06/2022](#)**

### **4. Holding of shares by Holding company held in subsidiary company is neither supply of goods nor services (Circular No – 196/08/2023).**

The security held by the holding company in the subsidiary company is neither goods nor services. Further, the purchase or sale of shares or securities, in itself is neither a supply of goods nor a supply of services. Therefore, the activity of holding shares of the subsidiary company per se cannot be treated as a supply of services by a holding company to the said subsidiary company and cannot be taxed under GST.

**Read Circular: [196/08/2023](#)**

### **5. Clarification on issues related to refund (Circular No 197/09/2023).**

CBIC issues clarifications on following issues relating to GST refund-

- Availability of refund of the accumulated Input Tax Credit (ITC) under section 54(3) of CGST Act for a tax period shall be restricted to ITC as per those invoices, the details of which are reflected in FORM GSTR-2B of the applicant for the said tax period or for any of the previous tax periods and on which the ITC is available to the applicant since availment of input tax credit has been linked with FORM GSTR-2B w.e.f. January 01, 2022.

- The applicant applying for a refund must give an undertaking to the effect that the amount of refund sanctioned would be paid back to the government with interest in case it is found subsequently that the requirement of section 16(2)(c) has not been complied with. This undertaking should be submitted electronically along with the refund claim.
- The value of goods exported out of India is to be included while calculating “adjusted total turnover”

**Read Circular: [197/09/2023](#)**

## **6. CBIC issues clarification on requirement of E-invoice to Government departments or establishments/ Government agencies/ PSUs etc which are solely registered for doing compliance with TDS provisions under section 51 (Circular No – 198/10/2023).**

These entities registered for compliance with TDS provisions u/s 51 of CGST Act would be treated as registered persons under GST and therefore, E-invoice needs to be issued for supplies made to them by a supplier who is liable to issue E-invoice.

**Read Circular: [198/10/2023](#)**

## **7. CBIC clarifies on ITC availability of common input services procured by Head-Office to Branch-Office in another state (Circular No – 199/11/2023).**

CBIC issues clarification regarding the taxability of common input services (CIS) provided by an office of an organization in one State to the office of that organization in another State, both being distinct persons. States that, where CIS is procured by Head Office (HO) from a third party but attributable to both HO and Branch Office (BO), HO has the option to distribute ITC of such CIS by following the ISD mechanism laid down in Section 20 r/w rule 39 or HO can also issue tax invoices u/s 31 to the concerned BOs in respect of CIS procured from a third party by HO and the BOs can then avail ITC on the same subject to sections 16 and 17.

**Read Circular: [199/11/2023](#)**

**Read our GST Update: [03/2023-24](#)**

## 8. CBIC extends due-dates for the amnesty scheme pursuant to 50 th GST Council meeting, issues Notifications.

CBIC issues notification regarding the extension of the amnesty scheme for non-filers and gives time to GSTR-4, GSTR-9, and GSTR-10 non-filers till August 31, 2023, to furnish respective returns in order to be eligible for late fee waiver.

<b>Notification No. 18/2023- Central Tax</b>	Extend the due date for furnishing FORM GSTR-1 for April, May, and June 2023 till July 31, 2023 for registered persons whose principal place of business is in the State of Manipur.
<b>Notification No. 19/2023- Central Tax</b>	Extend the due date for furnishing FORM GSTR-3B for April, May, and June 2023 till July 31, 2023 for registered persons whose principal place of business is in the State of Manipur.
<b>Notification No. 20/2023- Central Tax</b>	Extends the due date for furnishing FORM GSTR-3B for the quarter ending June, 2023 till July 31, 2023 for the registered persons whose principal place of business is in the State of Manipur.
<b>Notification No. 21/2023- Central Tax</b>	Extend the due date for furnishing FORM GSTR-7 for April, May, and June 2023 till July 31, 2023 for registered persons whose principal place of business is in the State of Manipur.
<b>Notification No. 22/2023- Central Tax</b>	Allows time till August 31, 2023 to furnish the GSTR-04 to become eligible for late fee waiver.
<b>Notification No. 23/2023- Central Tax</b>	Allows time till August 31, 2023 to apply for revocation of cancellation for those class of assesses whose registration has been cancelled before December 31, 2022 or who hasn't filed for revocation within the stipulated time u/s 30.
<b>Notification No. 24/2023- Central Tax</b>	Govt gives time to class of assesses till August 31, 2023 to furnish return in order to be eligible for the said amnesty scheme.
<b>Notification No. 25/2023- Central Tax</b>	Govt allows GSTR-9 non-filers time till August 31, 2023 to file return for the purpose of late fee waiver.
<b>Notification No. 26/2023- Central Tax</b>	Govt waives late fees for registered persons who failed to file the final return in FORM GSTR-10 within the due date but furnish the same within April 1, 2023 to August 31, 2023 w.e.f June 30, 2023.

## COMPLIANCE CALENDER:

<b>Date</b>	<b>Particulars</b>
<b>10-08-2023</b>	The due date for filing GSTR 7 for the month of June 2023.
<b>10-08-2023</b>	The due date for furnishing GSTR 8 for the month of June 2023 for registered e-commerce taxpayers in India.
<b>11-08-2023</b>	The last date to file the GSTR-1 for taxpayers having an annual aggregate turnover of more than INR 1.5 crore or the ones who have opted for the monthly return filing.
<b>13-08-2023</b>	The due date for filing GSTR-6 for Input Service Distributor (ISD) of July 2023
<b>20-08-2023</b>	Due date for Form GSTR-3B for the month of July 2023.
<b>24-08-2023</b>	Due date for Form GSTR-3B for the month of July 2023 for quarterly filers of GSTR-1.

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