

GST UPDATE
DECEMBER 2023

NOTIFICATIONS

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A NOTIFICATIONS UNDER CENTRAL TAX

S. N.	Date	Notification No.	Subject	Sec.	Rule
A.1	20.12.2023	55/2023 – CT	Extension of due date for filing of return in Form GSTR-3B for the month of November, 2023 for the persons registered in certain districts of Tamil Nadu	39	61
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A.1 Notification No. 55/2023 – CT ; dated 20.12.2023

G.S.R...(E).—In exercise of the powers conferred by sub-section (6) of section 39 of the Central Goods and Services Tax Act, 2017 (12 of 2017), the Commissioner, on the recommendations of the Council, hereby extends the due date for furnishing the return in **FORM GSTR-3B** for the month of November, 2023 till the twenty-seventh day of December, 2023, for the registered persons whose principal place of business is in the districts of Chennai, Tiruvallur, Chengalpattu and Kancheepuram in the state of Tamil Nadu and are required to furnish under sub-section (1) of section 39 read with clause (i) of sub-rule (1) of rule 61 of the Central Goods and Services Tax Rules, 2017.

[F. No. CBIC-20006/27/2023-GST]

(Nitish Karnatak)
Under Secretary

A.2 Notification No. 56/2023 – CT ; dated 28.12.2023

S.O.....(E).– In exercise of the powers conferred by section 168A of the Central Goods and Services Tax Act, 2017 (12 of 2017) (hereinafter referred to as the said Act) read with section 20 of the Integrated Goods and Services Tax Act, 2017 (13 of 2017), and section 21 of the Union territory Goods and Services Tax Act, 2017 (14 of 2017) and in partial modification of the notifications of the Government of India, Ministry of Finance (Department of Revenue), No. 35/2020-Central Tax, dated the 3rd April, 2020 published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i), vide number G.S.R. 235(E), dated the 3rd April, 2020 and No. 14/2021-Central Tax, dated the 1st May, 2021 published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i), vide number G.S.R. 310(E), dated the 1st May, 2021 and No. 13/2022-Central Tax, dated the 5th July, 2022, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i), vide number G.S.R. 516(E), dated the 5th July, 2022, and No. 09/2023-Central Tax, dated the 31st March, 2023 published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (ii), vide number G.S.R. 1564(E) dated the 31st March, 2023, the Government, on the recommendations of the Council, hereby, extends the time limit specified under sub-section (10) of section 73 for issuance of order under sub-section (9) of section 73 of the said Act, for recovery of tax not paid or short paid or of input tax credit wrongly availed or utilized, relating to the period as specified below, namely:–

- (i) for the financial year 2018-19, up to the 30th day of April, 2024;
- (ii) for the financial year 2019-20, up to the 31st day of August, 2024.

[F. No. CBIC-20013/7/2021-GST]

(Raghavendra Pal Singh)
Director

A.3 Notification dated 28.12.2023

**Ministry of Law and Justice
(Legislative Department)**

New Delhi, the 28th December, 2023/Pausha 7, 1945 (Saka)]

The following Act of Parliament received the assent of the President on the 28th December, 2023 and is hereby published for general information:—

**THE CENTRAL GOODS AND SERVICES TAX
(SECOND AMENDMENT) ACT, 2023
NO. 48 OF 2023**

[28th December, 2023.]

An Act further to amend the Central Goods and Services Tax Act, 2017.

BE it enacted by Parliament in the Seventy-fourth Year of the Republic of India as follows:—

Short title.

1. This Act may be called the Central Goods and Services Tax (Second Amendment) Act, 2023.

Amendment of section 110.

2. In section 110 of the Central Goods and Services Tax Act, 2017 (12 of 2017.),—

(A) in sub-section (1),—

(I) in clause (b), after sub-clause (ii), the following sub-clause shall be inserted, namely:—

“(iii) has been an advocate for ten years with substantial experience in litigation in matters relating to indirect taxes in the Appellate Tribunal, Customs, Excise and Service Tax Appellate Tribunal, State Value Added Tax Tribunal, by whatever name called, High Court or Supreme Court;”;

(II) the following proviso shall be inserted, namely:—

“Provided that a person who has not completed the age of fifty years shall not be eligible for appointment as the President or Member.”;

(B) in sub-section (9), for the words, “sixty-seven years, whichever is earlier and shall be eligible for re-appointment for a period not exceeding two years”, the words “seventy years, whichever is earlier and shall be eligible for re-appointment for a period not exceeding two years subject to the age-limit specified above” shall be substituted;

(C) in sub-section (10), for the words, “sixty-five years, whichever is earlier and shall be eligible for re-appointment for a period not exceeding two years”, the words “sixty-seven years, whichever is earlier and shall be eligible for re-appointment for a period not exceeding two years subject to the age-limit specified above” shall be substituted.

A.4 Notification dated 29.12.2023

S.O. 1(E) – In exercise of the powers conferred by the sub-section 3 of section 109 of the Central Goods and Services Tax Act, 2017 (12 of 2017) and in supersession of the Ministry of Finance, Department of Revenue's notification number S.O.1359(E), published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (ii), dated the 13th March, 2019, except as respect things done or omitted to be done before such supersession, the Central Government, on the recommendation of the Goods and Services Tax Council, hereby constitutes the Principal Bench of the Goods and Services Tax Appellate Tribunal (GSTAT) at New Delhi, with effect from the date of publication of this notification in the official Gazette.

[F. No. A-50050/99/2018-Ad.1CCESTAT(Pt.)]

Balasubramanian Krishnamurthy, Jt. Secy.

B INSTRUCTION UNDER CENTRAL TAX

S. N.	Date	Instruction No.	Subject	Sec.	Rule
B.1	13.12.2023	05/2023-GST	Judgment of the Honourable Supreme Court in the case of Northern Operating Systems Private Limited (NOS)	7 74	- -

B.1 Instruction No. 05/2023-GST; dated 13.12.2023

To,

All the Principal Chief Commissioners / Chief Commissioners / Principal Commissioners /Commissioners of Central Tax

All the Principal Directors General/ Directors General of Central Tax

Madam/Sir,

Subject: Judgment of the Hon’ble Supreme Court in the case of Northern Operating Systems Private Limited (NOS).

Attention is invited to the Hon’ble Supreme Court’s judgment dated 19.5.2022 in the case of CC, CE & ST, Bangalore (Adj.) etc. Vs. Northern Operating Systems Private Limited (NOS) in Civil Appeal No. 2289-2293 of 2021 on the issue of nature of secondment of employees by overseas entities to Indian firms and its Service Tax implications. Representations have been received in the Board that, subsequent to the aforesaid judgment, many field formations have initiated proceedings for the alleged evasion of GST on the issue of secondment under section 74(1) of the Central Goods and Services Tax Act, 2017 (hereinafter referred to as the ‘CGST Act’).

2.1 The matter has been examined by the Board. It appears that the Hon’ble Supreme Court in its judgment inter-alia took note of the various facts of the case like the agreement between NOS and overseas group companies, and held that the secondment of employees by the overseas group company to NOS was a taxable service of ‘manpower supply’ and Service Tax was applicable on the same. It is noted that secondment as a practice is not restricted to Service Tax and issue of taxability on secondment shall arise in GST also. A careful reading of the NOS judgment indicates that Hon’ble Supreme Court’s emphasis is on a nuanced examination based on the unique characteristics of each specific arrangement, rather than relying on any singular test.

2.2 Hon’ble Supreme Court in the case of Commissioner of Central Excise, Mumbai Versus M/s Fiat India(P) Ltd in Civil Appeal 1648-49 of 2004 has given the following observation –

“ 66.Each case depends on its own facts and a close similarity between one case and another is not enough because either a single significant detail may alter the entire aspect. In deciding such cases, one should avoid the temptation to decide cases (as said by Cardozo) by matching the colour of one case against the colour of another. To decide, therefore, on which side of the line a case falls, the broad resemblance to another case is not at all decisive.”

2.3 It may be relevant to note that there may be multiple types of arrangements in relation to secondment of employees of overseas group company in the Indian entity. In each arrangement, the tax implications may be different, depending upon the specific nature of the contract and other terms and conditions attached to it. Therefore, the decision of the Hon'ble Supreme Court in the NOS judgment should not be applied mechanically in all the cases. Investigation in each case requires a careful consideration of its distinct factual matrix, including the terms of contract between overseas company and Indian entity, to determine taxability or its extent under GST and applicability of the principles laid down by the Hon'ble Supreme Court's judgment in NOS case.

3.1 It has also been represented by the industry that in many cases involving secondment, the field formations are mechanically invoking extended period of limitation under section 74(1) of the CGST Act.

3.2 In this regard, section 74 (1) of CGST Act reads as follows:

*“(1) Where it appears to the proper officer that any tax has not been paid or short paid or erroneously refunded or where input tax credit has been wrongly availed or utilized **by reason of fraud, or any wilful-misstatement or suppression of facts to evade tax,**”*

3.3 From the perusal of wording of section 74(1) of CGST Act, it is evident that section 74(1) can be invoked only in cases where there is a fraud or wilful mis-statement or suppression of facts to evade tax on the part of the said taxpayer. Section 74(1) cannot be invoked merely on account of non-payment of GST, without specific element of fraud or wilful mis-statement or suppression of facts to evade tax. Therefore, only in the cases where the investigation indicates that there is material evidence of fraud or wilful misstatement or suppression of fact to evade tax on the part of the taxpayer, provisions of section 74(1) of CGST Act may be invoked for issuance of show cause notice, and such evidence should also be made a part of the show cause notice.

4. The above aspects may be kept in consideration while investigating such cases and issuing show cause notices.

5. Difficulties, if any, in implementation of these instructions may be informed to the Board (gst-cbec@gov.in).

(Sanjay Mangal)
Principal Commissioner (GST)

Copy to:

1. The Joint Secretary, GST Council Secretariat, New Delhi, for circulating the same to all States/ UTs for information and necessary action at their end. 2. Webmaster, CBIC (for uploading under 'Instructions' on www.cbic.gov.in).
