

GST@7

Building blocks for a Viksit Bharat





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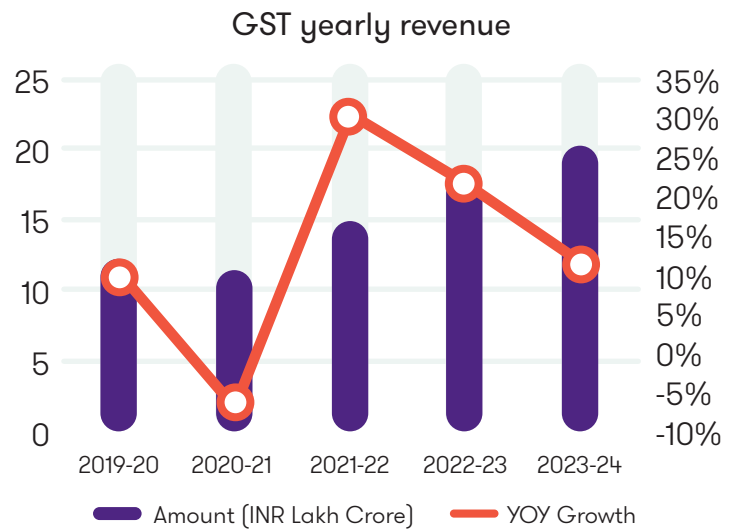
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Seven areas to watch out for in FY 24-25

GST trends so far

The fiscal year 2023-24 marked a significant milestone, with total GST collections surpassing INR 20 lakh crore annually and the average monthly collection standing at INR 1.68 lakh crore. April 2024 witnessed a record-high collection of INR 2.1 lakh crore.

This remarkable achievement has been driven by strong GDP growth, robust demand, an upswing in auto and real estate activities, and rigorous efforts to enhance compliance and combat tax evasion.



Over the past year, we have witnessed record-high revenue collections in both direct and indirect taxes, indicating robust economic growth. The Government has made significant strides in simplifying tax compliance, reducing litigation, and implementing tax-friendly policies to enhance the ease of doing business. Looking ahead, we can anticipate further automation and streamlining of compliance, faceless GST assessments similar to those in direct tax, and the digital integration of data between departments.

Riaz Thingna

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The GST revenue collection has shown a commendable upward trajectory over the past seven years with strong growth.



1.46 Crore registered taxpayers



137 Crore returns filed



485 Crore e-way bills generated



2018 Crore e-invoices uploaded

Source: <https://gstn.org.in>

GST Triumphs: Seven key milestones



Increased revenue collections



Expanded taxpayer base



Automation and streamlining
GST compliances



Ease of doing business
(especially MSMEs)



Simplifying ITC mechanism



Reduction in tax evasion



Addressing key industry issues

The GST has revolutionized the digital landscape through relentless efforts in automating and streamlining compliance processes. This includes introducing new functionalities on the GSTN portal, biometric Aadhaar authentication, and enhancements to the e-invoice and e-way bill portal, significantly improving the logistics and supply chain efficiency. The government's persistent focus on resolving key industry issues and minimise tax evasion has been commendable.

Over the last 53 GST council meetings, the council has consistently addressed the challenges faced by the taxpayers and introduced trade facilitation measures like interest and penalty waiver, reduction in pre-deposit amounts, relaxing ITC timelines, all aimed at enhancing ease of doing business, specifically for the MSMEs. With the Modi 3.0 government taking office again, we can anticipate progress on long-standing policy issues such as rate rationalization and the inclusion of petroleum products, aiming to make GST a truly 'Good and Simple tax'.

Krishan Arora

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Key developments during FY 23-24

Over the past seven years, the GST Council has remained dedicated to simplifying tax compliance, addressing critical industry concerns, and periodically reviewing GST rates on goods and services. Through 53 meetings, the Council has made pivotal decisions aimed at enhancing the efficiency and effectiveness of the GST framework which can be demonstrated from the numbers of notifications and circulars which have been issued till date.

53 GST council meetings

1027 notifications

227 Circulars

(Till 28.06.2024)

A. Technology driven initiatives



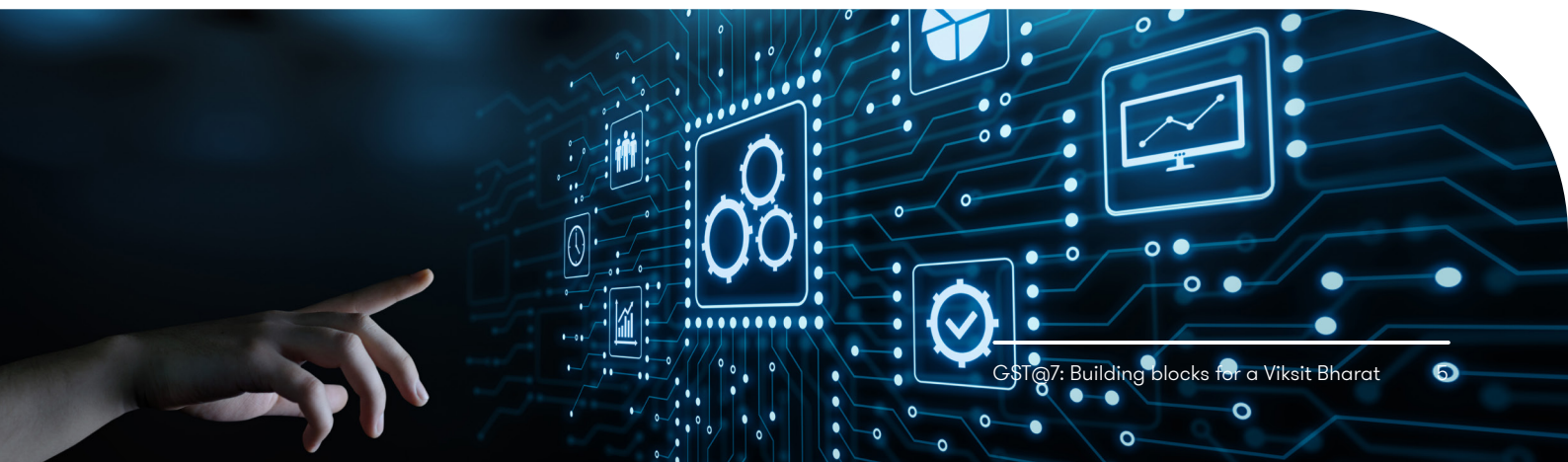
Enhanced e-invoicing portal



Launch of E-Way Bill 2 Portal



New functionalities on GSTN portal



B. Legislative changes

1. Online gaming-related amendments

May 11,
2023

The GST Council, in its 50th Council meeting, recommended 28% GST rate on the full-face value of chips purchased/bets placed for casino, horse racing and online gaming.

Aug 2,
2023

The Central and Integrated Goods And Services Tax (Amendment) Act, 2023, was introduced, with effect from 1 October 2023

The Karnataka HC, in the case of M/s Gameskraft Technologies, in a landmark judgement, held games such as rummy, played with or without stake, as a game of skill

July 11,
2023

In the 51st GST Council meeting, a new valuation mechanism for online gaming and actionable claims was put in place.

Aug 11,
2023

- Key definitions, such as online gaming, online money gaming, and specified actionable claim introduced
- Exclusion of specified actionable claim involved in online money gaming from Schedule III
- Exclusion of online money gaming from the scope of OIDAR
- Simplified registration scheme for overseas suppliers of online money gaming
- Introduction of Rule 31B and Rule 31C prescribing valuation in the case of online gaming and actionable claims in the case of casinos, respectively

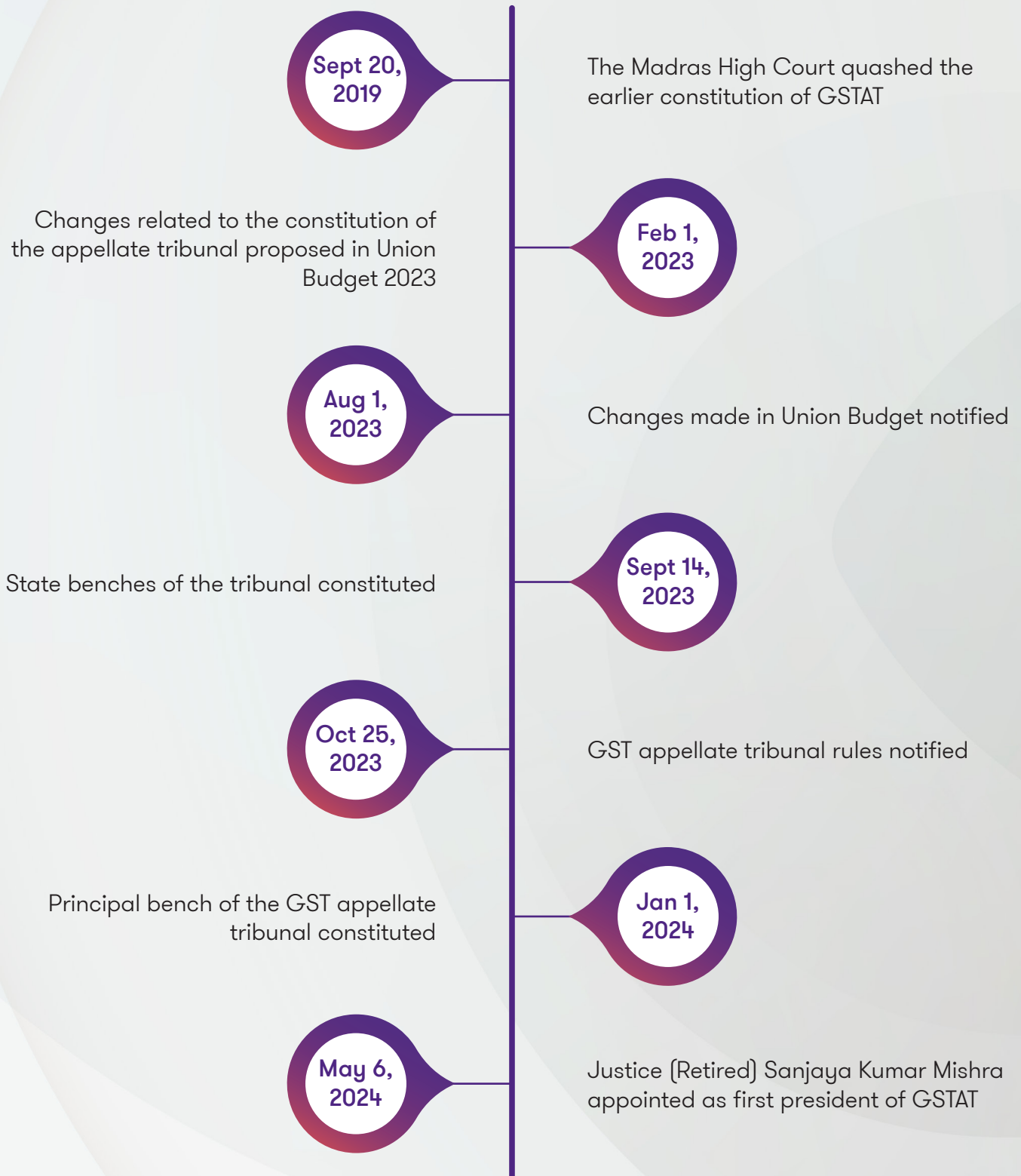
2. Valuation of corporate guarantee arrangements

Introduction of Rule 28(2), prescribing the value of guarantee arrangements to be higher than 1% of the guarantee offered or actual consideration*.

*GST council, in its 53rd GST council meeting, has proposed non-applicability of said where the recipient is eligible for full ITC

3. GST Appellate Tribunal

The progress on long awaited GST Appellate Tribunal accelerated over the past year with major developments on the judicial front.



C. Key clarifications

A series of clarifications were being issued by the CBIC on key issues to facilitate ease of doing business.

Issue involved	Clarification
GST applicability in case of secondment agreement	<ul style="list-style-type: none">• The SC decision, rendered in case of Northern Operating System, should not be applied mechanically.• Taxability is to be determined based on factual matrices.• Evidence for invocation of extended period should form part of SCN.
GST on holding of securities of a subsidiary company	<ul style="list-style-type: none">• Securities include shares that do not qualify as goods or services.• The purchase or sale of shares or securities in itself is neither a supply of goods nor a supply of services.
ITC eligibility in respect of warranty replacement	<ul style="list-style-type: none">• No reversal of ITC is required with respect to the replacement of parts or the repair services provided during the warranty period, as these are not exempt supplies.
Services between distinct persons	<ul style="list-style-type: none">• Recipient eligible for ITC<ul style="list-style-type: none">– The value declared in the invoice is construed as the value of the supply– In case of no invoice, the value may be deemed as NIL• Recipient not eligible for ITC• Employee costs will not necessarily be included

Seven major judicial pronouncements

01

SC dismisses appeal against the Calcutta HC's order affirming that ITC cannot be denied due to supplier's default to pay tax

The SC dismissed the department's appeal and upheld the Calcutta HC's decision, which had set aside the demand arising out of excess input tax credit (ITC) availed by the assessee against the invoices that did not reflect in its GSTR 2A, resulting in a difference in GSTR-2A and GSTR-3B. The HC had observed that the assessee had satisfied all the prerequisites of availing ITC, and such entitlement cannot be denied due to non-payment of the tax by the supplier despite collecting the same from the assessee.

(please refer to the [link](#) for the detailed tax alert)

02

Delhi HC upholds constitutional validity of anti-profiteering provisions

The Delhi HC upheld the validity of the anti-profiteering provisions contained under the Central Goods and Services Tax Act 2017, read with Central Goods and Services Tax Rules 2017. Holding the provisions to be in the nature of consumer welfare and not a price-fixing mechanism, the HC held that a uniform formula or methodology could not be prescribed as 'no one size fits all,' and the profited amount has to be calculated on a case-to-case basis.

(please refer to the [link](#) for the detailed tax alert)

03

Telangana HC holds the transfer of development rights under the Joint Development Agreement as a 'service' and not an outright 'sale of land'

The Telangana HC held that the transfer of development rights through a Joint Development Agreement does not qualify as an outright 'sale of land.' The HC observed that neither there is a mere transfer of development rights nor an automatic transfer of ownership or title rights over any portion of land belonging to the landowner in favour of the developer. This qualifies as a supply of 'service' in exchange for consideration in the form of construction services.

(please refer to the [link](#) for the detailed tax alert)

04

P&H HC stays the operation of circular clarifying the taxability of corporate guarantee

The P&H HC has stayed the operation of the CBIC circular to the extent it clarified that the provision of a corporate guarantee by a company to banks/financial institutions on behalf of its related company is to be treated as a supply of service liable to GST.

(please refer to the [link](#) for the detailed tax alert)

05

Madras HC held that a gift voucher is an actionable claim, taxable at the time of issuance only in case of specified and identified goods

The Madras HC upheld that a voucher itself does not qualify as either a good or service under Schedule III of the CGST Act, 2017, and consequently, gift vouchers, in their essence, are not subject to tax under the GST regime. However, modifying the AAAR decision with respect to the time of supply, the HC emphasised that the supply associated with the voucher is classifiable according to the nature of goods or services supplied in exchange for the voucher issued to the customer.
(please refer to the [link](#) for the detailed tax alert)

06

Kerala HC upholds constitutional validity of Section 16(2)(c) and Section 16(4); states retrospective applicability of extended time limit for availing ITC*

The Kerala HC upheld the validity of Sections 16(2)(c), which allows credit after payment of tax by the supplier to the government and Section 16(4) of the CGST Act, which provides a time limit for availing the ITC. The HC emphasised that the ITC is a benefit or concession extended under the statutory scheme, which accrues only upon fulfilment of the attached conditions. Furthermore, the HC opined that the amendment extending the due date till 30 November of the succeeding financial year is procedural and should be given retrospective effect from FY 17-18 onwards.
(please refer to the [link](#) for the detailed tax alert)

*On similar lines, GST council, in its 53rd council meeting, proposed to extend timeline from FY 17-18 to FY 20-21 to 30 November 2021.

07

Madras HC held no interest liability would arise where tax is deposited in the electronic cash ledger within the due date but the return is filed belatedly*

The Madras HC held that interest implications do not arise where tax is paid in the electronic cash ledger within the stipulated deadline of filing Form GSTR-3B, even though there is a delay in filing the actual return. Emphasising that the payment of the tax to the government is not contingent on the exact date of filing GSTR-3B, which can be made before the return is furnished, it clarified that GSTR-3B only serves as a mechanism to ascertain that the registered person has discharged all tax liabilities and payments.
(please refer to the [link](#) for the detailed tax alert)

*Amendment proposed on similar lines in recent 53rd GST council meeting to exclude electronic cash ledger balance from interest computation.

Seven areas to watch out for in FY 2024-25

With the NDA government returning to power and Nirmala Sitharaman continuing as Finance Minister for her consecutive third term, expectations are high for the resolution of pending developments that were put on hold during the election period. Despite seven years of GST implementation, the GST appellate tribunal is yet to be fully functional and operationalised. However, it is anticipated that the government may expedite the appeal process to clear the backlog and digitise the entire process, which would be considered a friendly measure. Pressing issues that can be settled in the coming days may include:

Rate rationalisation

- Rationalisation of GST rates into three slabs from the current four slabs
- Correction of inverted duty structure

Inclusion of petroleum products

Petroleum products such as petrol, diesel, ATF and natural gas, which are leviable to legacy taxes such as VAT, CST & Excise, may be brought under the ambit of GST

Sector specific considerations

- **Real estate sector**
 - **ITC eligibility on immovable property:** The SC's decision determining the ITC eligibility on input or input services procured for the construction of immovable property is expected to be anytime soon providing clarity on much awaited issue
 - **Transfer/ assignment of leasehold land right:** Taxability of long term lease of land, in regard to whether it qualifies as supply of services or sale of immovable property outside GST ambit, is awaiting clarity from SC.
- **Online gaming**
 - **Taxability and valuation of online gaming:** The SC will determine the fate of online gaming companies with respect to differentiation between 'game of skill' vs 'game of chance' and the validity of new valuation provisions.

Taxability of royalty

The classification of royalties on mining operations and explorations as either a 'service' or a 'tax' has been a contentious issue, leading to litigation. This matter is currently before a 9-judge bench of the Supreme Court concerning service tax, and the judgment will also determine its implications under GST.

Anti-profiteering issues

The SC to determine the constitutional validity of antiprofitteering provisions. The outcome is crucial for multiple industries, especially with the proposed 1 April 2025 deadline for new anti-profiteering applications approaching.

Litigation Resolution

- Operationalisation of GSTAT state benches to reduce the pending backlog of cases
- Alternative dispute resolution mechanism under GST for expeditious resolution of disputes
- Faceless assessments under GST by leveraging technology and data analytics

Valuation issues

Matters pending before the courts regarding valuation of supplies between the related entities since the GST inception are poised to be influenced by the outcome of 53rd GST council meeting. It could have significant impact particularly when tax and/or interest have been paid under protest.

Finally, after seven years of GST implementation, the government is gearing up to operationalise all benches of the GSTAT tribunal. This was much needed to alleviate the burden on the High Courts, which had been overwhelmed due to a lack of alternate remedies. The introduction of amnesty schemes aims to reduce the ongoing litigation and represents a significant step in the right direction to provide practical solutions for settling past disputes.

Implementing the standard adjudication timelines for notices and orders and their impact on the taxpayers will be particularly interesting to observe if they align with the government's objective of reducing litigation. The definition of Intermediaries, input tax credit on real estate, and levy of GST on long-term leases are some issues still prone to litigation and merit amendments/ clarification.

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Afterword

With the Union Budget 2024-25 around the corner, the new government is expected to introduce tax-friendly measures and address existing anomalies in the GST regime. Such steps are anticipated to streamline the tax structure further, enhance ease of compliance, and foster a more business-conducive environment. By tackling these issues head-on, the government can bolster economic growth, improve revenue collections, and ensure a fair and transparent tax system.

As we reflect on seven years of GST implementation, it is clear that ongoing reforms and proactive governance will be crucial in realising the full potential of this transformative tax system.





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