

# GST NEWSLETTER

ISSUE 24 | JUNE 2023

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## ARTICLE

# “Assignment Of Leasehold Rights On Land” - Critical Analysis

Leasehold rights on land play a crucial role in various real estate transactions and business operations. Many units are set up on leasehold land provided by state industrial development corporation.

### What is “Assignment of Leasehold Rights”:


- The assignment of leasehold rights on land refers to the transfer of the leasehold interest or rights from one party to another.
- It involves the transfer of the rights and obligations associated with a lease agreement from the original lessee (assignor) to a new party (assignee).

Leasehold rights on land typically arise when a lessee enters into a lease agreement with the lessor to use and occupy the land for a specific period, usually for commercial, industrial, or residential purposes. The lessee holds the leasehold rights, which include the right to possess and use the land within the terms and conditions outlined in the lease agreement.

However, there may be situations where the original lessee, for various reasons, decides to transfer or assign their leasehold rights to another party for consideration. This can occur when the lessee wants to exit the lease, restructure their business operations, or transfer the lease to a new owner.

The assignment of leasehold rights involves a formal agreement between the assignor and assignee that outlines the terms of the transfer.





The assignor relinquishes their rights and responsibilities as the original lessee, while the assignee assumes those rights and obligations for the remaining lease term.

It is important to note that the assignment of leasehold rights does not necessarily involve the transfer of ownership of the land itself. The assignee steps into the shoes of the original lessee and continues to hold the leasehold interest for the remaining term specified in the lease agreement.

The assignment of leasehold rights on land can have various legal, financial, and operational implications for both the assignor and assignee. It is crucial for all parties involved to carefully review the terms of the lease agreement, understand their rights and obligations, and ensure compliance with any legal or regulatory requirements related to the assignment.

### ✓ **GST Implications**

The Goods and Services Tax (GST), introduced in India in 2017, has brought significant changes to the taxation system. It is important to understand the implications of GST on the assignment of leasehold rights on land and how it affects different stakeholders involved.

As per Section 7(1) of the CGST Act, 2017, supply” includes:

All forms of supply of goods or services or both, such as sale, transfer, barter, exchange, license, rental, lease or disposal made or agreed to be made for a consideration by a person in the course or furtherance of business.

Thus, under the GST regime, leasehold rights on land can be considered as a supply of services and thereby subject to taxation.

Further, as per Sr. No. 41 of Notification No.12/2017 - Central Tax Rate F.No.334/1/2017-dated 28th June, 2017 in continuity with Notification No. 28/2019-Central Tax (Rate) F. No. 354/204/2019- dated 31th December, 2019, following transaction is classified as Exempt:

Upfront amount called as premium, salami, cost, price, development charges or by any other name payable in respect of long term lease of 30 years, or more of industrial plots or infrastructure development plots for financial business, provided by the State Government Industrial Development Corporations or Undertakings or by any other entity having 50% or more ownership of Central Government, State Government, Union territory to the industrial units or the developers in any industrial or financial business area subject to following conditions

- The leased plots shall be used for industrial or financial activity in an industrial or financial business area



- The State Government shall monitor and enforce the condition as per the order issued by the State Government
- In case of any violation or subsequent change of land use, the original lessor, original lessee as well as any subsequent lessee or buyer or owner shall be jointly and severally liable to pay tax along with the applicable interest and penalty
- The lease agreement entered shall incorporate in the terms and conditions that the tax was exempted on the long term lease of the plots by the original lessor to the original lessee subject to above condition and the parties to the said agreements undertake to comply with the same.

Thus, GST on assignment of lease hold rights has been classified as exempt only if it falls within the ambit of above entry satisfying all the conditions.

### ✔ **Contradictory View**

As per Section 7(2)(a) of the CGST Act 2017 read along with Entry no. 5 of Schedule III, sale of land is treated neither as supply of goods nor as supply of services.

As per the Registration Act 1880, "immovable Property" includes land, buildings, hereditary allowances, rights to ways, lights, ferries, fisheries or any other benefit to arise out of land, and things attached to the earth, or permanently fastened to anything which is attached to the earth, but not standing timber, growing crops nor grass.

As per the General Clauses Act 1897:, "Immovable property' shall include land, benefits to arise out of land, and things attached to the earth or permanently fastened to anything attached to the earth".

**Leasehold rights can be construed as benefit arising from land, thereby treating the same as Immovable Property or Land itself for the purpose of Registration Act attracting Stamp Duty and registration charges.** Thus, as per State Governments, the assignment of leasehold rights on land is considered as a transfer of ownership for state revenue purposes..

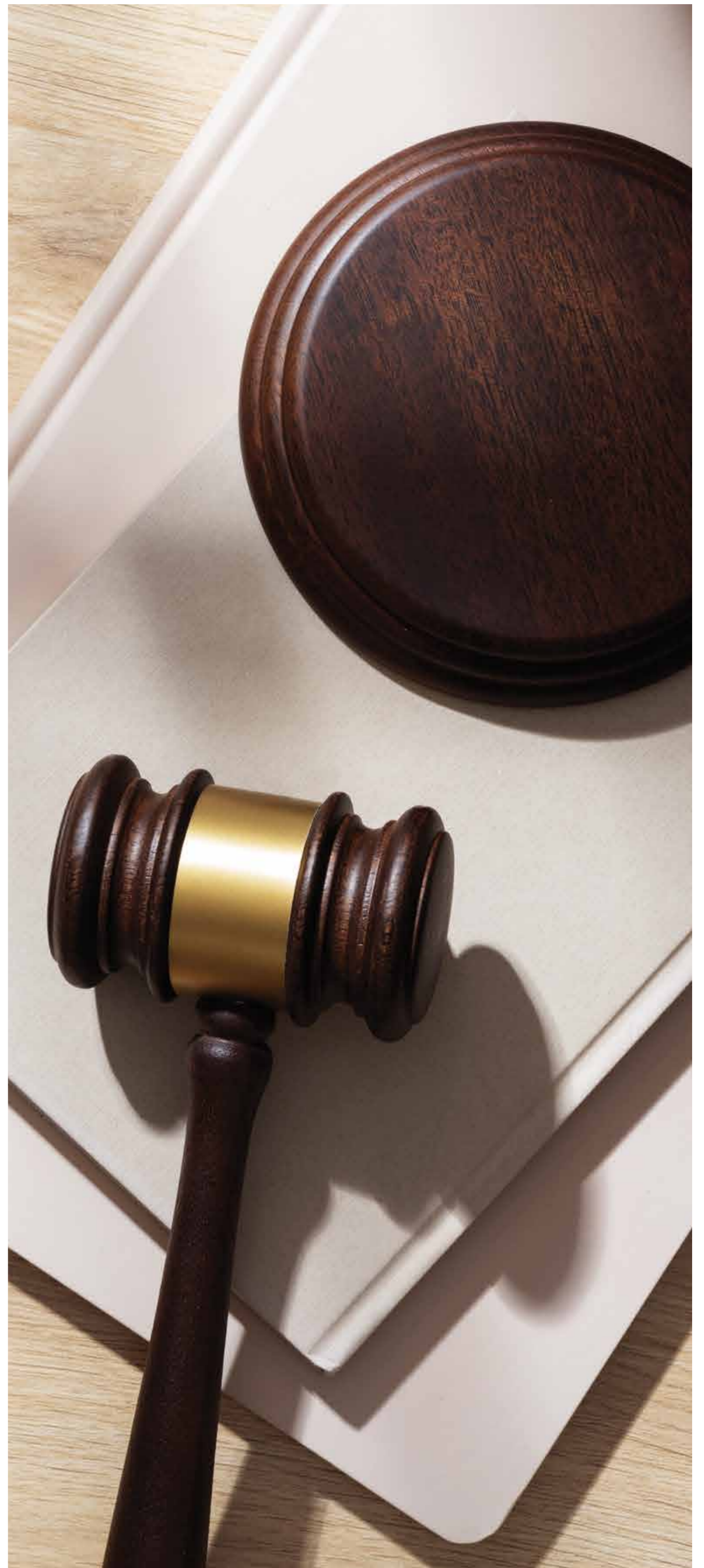
**Irony created due to non-alignment of definition of Assignment of Lease hold rights under Registration Act and GST leading** to double taxation as the individuals or businesses involved in the assignment of leasehold rights on land must comply with both the state revenue requirements, such as stamp duty and the GST obligations.




It is important to note that under the erstwhile service tax regime in India, the assignment of leasehold rights on land was specifically listed as an exempted service. This means that no service tax was applicable on such assignments, regardless of the purpose of the lease (residential, commercial, or industrial). The exemption from service tax on the assignment of leasehold rights was provided to avoid double taxation since the leasehold rights were considered immovable property, and the transfer of immovable property was already subject to other taxes, such as stamp duty.

### ✔ **Advance Ruling**

In the case of **Enfield Apparels Ltd**, the AAR-West Bengal held that The activity of assignment is in the nature of agreeing to transfer one's leasehold rights. It does not amount to further sub-leasing, as the applicant's rights as per the Deed of sub-lease stands extinguished after assignment. Neither does it create fresh benefit from the land. It is in the nature of compensation for agreeing to do the transfer of the applicant's rights in favour of the assignee. It is a service classifiable under 'Other miscellaneous service' (SAC 999792) and taxable @ 18%. Further the transfer fee charged by the Sub-lessor is the consideration payable to the Sublessor for providing a service in the course or furtherance of business, more specifically because business includes supply or acquisition of goods or services in connection with the closure of a business in terms of section 2 (17) (d) of the GST Act. The GST to be paid on such transfer fee is, therefore, admissible as input tax credit.





In the case of **Jinmagal Corporation**, the AAR-Gujarat held that the Schedule II of GST Act, 2017 specifies that lease of an industrial place/land or building is the activity to be treated as supply. Since no notification declaring the area consisting of plot of land as industrial/financial business area is on record, the benefits of exemption notification is not available. Leasing of private property even if for more than 30 attracts GST @ 18% classified under HSN 997212.

### ✔ **Burning Issue In MIDC Areas For GST Matter**

Thousands of units in Maharashtra including Thane, Navi Mumbai, Pune, Nagpur etc have not paid GST on assignment of lease considering this as sale of land and assuming that the exemption under Sr. No. 41 of notification No. 12/2017 dated 28.06.2017 would be available to them. However, it does not cover subsequent transfers of lease premium on assignment of leasehold right.

Also, there are many GST Advance Rulings stating that long term lease cannot be equivalent to sale of land and would be taxable under the GST law, thereby confirming GST on such supply.

Thus, the GST department has also started issuing notices under the CGST Act 2017 on the assignment of lease hold rights charging 18% GST on the total value of the assignment agreement.

While, the State Revenue department is considering this assignment of lease as sale of land and building and thus charging full stamp duty and registration charges accordingly.

## **Conclusion**

The above contradictory views from the GST Laws and State Laws are creating multiplicity of taxes for the same transactions, which should not be viable in the eyes of the law. Thus, the government should hence analyse the situation and take pertinent action on urgent basis.

## CASE LAWS

# Online Rummy Games Played Are Not Taxable As 'Betting' And 'Gambling': Karnataka High Court Quashes GST Intimation Notice Demanding ₹ 21,000 Crores Against Gameskraft

Gameskraft Technologies Private Limited Vs Directorate General of Goods Services Tax Intelligence - Writ Petition No. 19570 of 2022; dated: 11/05/2023

### Facts Of The Case

M/s. Gameskraft Technologies Private Limited., (GTPL) claims to be an Online Intermediary firm founded in June 2017 that operates technological platforms that allow players to compete in skill-based online games. The petitioner has over 10 lakh users from across India, is based in Bangalore, and is GST registered. The Respondent issued a Show Cause Notice and Intimation Notice under Section 74(1) and 74(5) of the CGST Act, requiring GTPL to deposit Rs. 2,09,89,31,31,501/- in addition to interest and penalties.

The petitioner contented that the cash contributed by participants to the prize pool is held in trust, and the firms organizing the events do not have any ownership rights, liens, or interest in these funds and the entities merely collect a service fee, which is subject to the payment of GST for services provided and such concerned entities have not delivered any goods or made any legal claims pertaining to the funds.

The question was whether offline or online games like Rummy, which are primarily focused on skill rather than chance and can be played with or without stakes, constituted "gambling or betting," as defined in Entry 6 of Schedule III of the Goods and Services Act, 2017.

### Provision Of The Law

As per Section 7(2) of the CGST Act, 2017 read with Schedule III of the Act: Taxation of games of skill is outside the scope of the term "supply".

Entry 6 in Schedule III to the CGST Act; "Actionable claims, other than lottery, betting and gambling: Actionable claims refer to claims that can be legally enforced. These claims excluding lottery, betting and gambling activities are not subject to GST. Examples include insurance claims and debt claims."



## Ruling

The court ruled that the terms “betting” and “gambling” in Entry 6 of Schedule III of the CGST Act must be interpreted in the same way that they have been in the context of Entry 34 of List II of the Seventh Schedule to the Constitution and the Public Gambling Act, 1867. As a result, the phrases “betting” and “gambling” contained in Entry 6 of Schedule III of the CGST Act do not and cannot encompass games of skill and consequently, ruled to quash the impugned Show Cause Notice and declared it to be illegal, arbitrary and without jurisdiction or authority of law.

## CASE LAWS - 2

# Input Tax Credit On Construction Of Shed Using Prefabricated Technology - AAR Telangana Advance Rulings

Case Name : M/s. Sanghi Enterprises – GST AAR Telangana - Order No.04/2023; dated: 12/04/2023

## Facts Of The Case


The applicant is building a shed on leased land, and the building is a prefabricated shed system. It was mentioned that the shed is just an assembly of the system, which consists of prefabricated and pre-engineered components fixed together in a modular form without welding, just using nuts and bolts so that it may be quickly and easily unfixd.

The question was whether Input Tax Credit is allowed for construction of shed using prefabricated technology?

## Provision Of The Law

Section 17(5) of CGST/TGST Act'2017 states: 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.

## Ruling

It has been held by the AAR that the applicant is constructing a prefabricated shed (PFS) on land for conducting business, and the shed has no separate existence apart from the RCC platform used for business purposes. Therefore, the PFS is considered as an immovable property and the Input Tax Credit is not provided on inward supplies for its construction, including works contract services, as the credit falls under the category of blocked input tax credits under sections 17(5)(d) and (c) of the CGST/TGST Act 2017.

## CASE LAWS - 3

# Entitlement Of Itc After Cancellation Of GST Registration Can Be Considered During Revocation - Rajasthan High Court

Case Name : M/s. R.K. Jewelers Vs Union of India - D.B. Civil Writ Petition No. 4236/2023; dated: 26/04/2023

## Facts Of The Case

This petitioner is a registered Jewellers vendor and hereby challenged the Impugned Order passed by the Appellate Authority, Commercial Tax, Jodhpur, whereby the GST registration of the Petitioner was cancelled on the ground of non-filing of GST return. Further, an appeal was filed by the Petitioner against the Impugned Order which was also rejected by the Appellate Authority.

The question was whether ITC can be claimed during revocation of cancelled GST registration?



## Provision Of The Law

Section 30 of the Central Goods and Services Tax Act, 2017 (“the CGST Act”): “Revocation of cancellation of registration.

30. (1) Subject to such conditions as may be prescribed, any registered person, whose registration is cancelled by the proper officer on his own motion, may apply to such officer for revocation of cancellation of the registration in such manner, within such time and subject to such conditions and restrictions, as may be prescribed.

(a) by the Additional Commissioner or the Joint Commissioner, as the case may be, for a period not exceeding thirty days;

(b) by the Commissioner, for a further period not exceeding thirty days, beyond the period specified in clause.

(2) The proper officer may, in such manner and within such period as may be prescribed, by order, either revoke cancellation of the registration or reject the application: Provided that the application for revocation of cancellation of registration shall not be rejected unless the applicant has been given an opportunity of being heard.

(3) The revocation of cancellation of registration under the State Goods and Services Tax Act or the Union Territory Goods and Services Tax Act, as the case may be, shall be deemed to be a revocation of cancellation of registration under this Act.”

## Ruling

The court held that, the cancellation of registration effected on the ground of non-filing of GST return, could be revoked and the assessee can claim Input Tax Credit (“ITC”) when the department considers the issue of revocation of such cancelled GST registration. Also, the assessee shall be entitled to lodge its claim for availment of ITC in respect of the period from the cancellation of the GST registration till the GST registration is restored.

# NOTIFICATIONS AND CIRCULARS FOR THE MONTH OF MAY 2023

- ✓ Central Tax Notification. - [Click here](#)
- ✓ Central Tax (Rate) Notification. - [Click here](#)
- ✓ Integrated Tax (Rate) Notification. - [Click here](#)
- ✓ Union Territory Tax (Rate) Notification. - [Click here](#)

Sl. No	Subject	Notifications/Circulars No. Date of Issue
1.	Seeks to extend the due date for furnishing FORM GSTR-7 for April 2023 for registered persons whose principal place of business is in the State of Manipur.	13/2023-Central Tax Dated: 24-05-2023
2.	Seeks to extend the due date for furnishing FORM GSTR-3B for April 2023 for registered persons whose principal place of business is in the State of Manipur.	12/2023-Central Tax Dated: 24-05-2023
3.	Seeks to extend the due date for furnishing FORM GSTR-1 for April 2023 for registered persons whose principal place of business is in the State of Manipur.	11/2023-Central Tax Dated: 24-05-2023
4.	Seeks to implement e-invoicing for the taxpayers having aggregate turnover exceeding Rs. 5 Cr from 01st August 2023.	10/2023-Central Tax Dated: 10-05-2023
5.	Seeks to amend notification No. 11/2017-Central Tax (Rate) dated 28.06.2017 so as to extend last date for exercise of option by GTA to pay GST under forward charge.	05/2023-Central Tax (Rate) Dated: 09-05-2023
6.	Seeks to amend notification No. 08/2017-Integrated Tax (Rate) dated 28.06.2017 so as to extend last date for exercise of option by GTA to pay GST under forward charge.	05/2023-Integrated Tax (Rate) Dated: 09-05-2023
7.	Seeks to amend notification No. 11/2017-Union Territory Tax (Rate) dated 28.06.2017 so as to extend last date for exercise of option by GTA to pay GST under forward charge.	05/2023-Union Territory Tax (Rate) Dated: 09-05-2023

# DUE DATES OF GST FOR THE MONTH OF JUNE 2023

## JUNE

Sunday	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday
				1	2	3
4	5	6	7	8	9	GSTR-7, GSTR-8 10
* GSTR-1 11	12	* GSTR-1, * GSTR-5/GSTR-6 * IFF (Optional) 13	14	15	16	17
CMP-08 18	19	* GSTR-3B GSTR-5A 20	21	* GSTR-3B (G-1) 22	23	* GSTR-3B (G-2) 24
25	26	27	GSTR-11 28	29	30	

## 2023

- \* Monthly return for taxpayers with Annual Turnover more than 1.5 Crore or Taxpayer who has opted Monthly return option.
- \* Monthly return for taxpayers with Annual Turnover up to 1.5 Crore or Taxpayer who has opted Quarterly return option (October 2022 - December 2022).
- \* Quarterly returns for taxpayers with Annual Turnover less than Rs. 5 Crores and opted for quarterly return monthly payment option (QRMP).
- \* Monthly return for taxpayers with Annual Turnover of up to or more than INR 5cr in Previous FY Monthly Filing – December 2022
- \* Quarterly (October 2022- December 2022)



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