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GOVERNMENT OF GOA

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GOVERNMENT OF GOA

Department of Finance

Office of the Commissioner of Commercial Taxes

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No. CCT/26-4/2024-25/G/3459

Subject: Clarification in respect of advertising services provided to foreign clients–reg.

Ref.: Circular No. 230/24/2024-GST dated 10th September, 2024 issued under Central Goods and Services Tax Act, 2017 by the GST Policy Wing, Central Board of Indirect Taxes and Customs, Department of Revenue, Ministry of Finance, Government of India, New Delhi.

Circular

(No. 23/2024-25-GST)

The GST Policy Wing, Central Board of Indirect Taxes and Customs, Department of Revenue, Ministry of Finance, Government of India, New Delhi has issued the above referred Circular.

For the uniformity in implementation and in exercise of the powers conferred under Section 168 of the Goa Goods and Services Tax Act, 2017 (Goa Act 4 of 2017) it is hereby directed that the Said Circular issued by the GST Policy Wing, Central Board of Indirect Taxes and Customs, Department of Revenue, Ministry of Finance, Government of India shall be applicable, *mutatis mutandis*, in implementation of the Goa Goods and Services Tax Act, 2017 (Goa Act 4 of 2017).

A copy of the above referred circular is attached herewith as Annexure.

Difficulty, if any, in implementation of this circular may please be brought to the notice of the undersigned.

Given under the seal of this office.

S. S. Gill, IAS, Commissioner of State Taxes, Goa.

Panaji, 01st November, 2024.

ANNEXURE

Circular No. 230/24/2024-GST

F. No. CBIC-20001/6/2024-GST
Government of India
Ministry of Finance
Department of Revenue
Central Board of Indirect Taxes and Customs
GST Policy Wing

New Delhi, dated the 10th September, 2024

To,

The Pr. Chief Commissioners/Chief Commissioners/ Principal Commissioners/Commissioners of Central Tax (All),

The Principal Directors General/Directors General (All).

Madam/Sir,

Subject: Clarification in respect of advertising services provided to foreign clients–reg.

References have been received from the trade and industry requesting for clarification regarding advertising services being provided by Indian advertising companies/agencies to foreign entities, as some of the field formations are considering the place of supply of the said services as within India, thereby denying the export benefits to such advertising companies.

1.2 In view of the difficulties being faced by the trade and industry and to ensure uniformity in the implementation of the provisions of the law across field formations, the Board, in exercise of its powers conferred by Section 168 (1) of the Central Goods and Services Tax Act, 2017 (hereinafter referred to as "CGST Act"), hereby clarifies the issues in succeeding paragraphs.

2. Issue in Brief:

2.1 A foreign company or firm hires an advertising company/agency in India for advertisement of its goods or services and may enter into a comprehensive agreement with the advertising company/agency encompassing all the issues related to advertising services ranging from media planning, investment planning for the same, creating and designing content, strategizing for maximum customer reach, the identification of media owners, dealing with media owners, procuring media space, etc. for displaying/broadcasting/printing of advertisement including monitoring of the progress of the same. In such a case, the advertising agency provides a one stop solution to the client who outsources the entire activity to the agency.

2.2 In this scenario, media owners raise invoice to the advertising agency for inventory costs, which are then paid by the advertising agency. Subsequently, the advertising agency raises invoice to the foreign client for the rendered advertising services and receives the payments in foreign exchange from the foreign client. In this regard, clarification has been sought as to:

a. Whether the advertising company can be considered as an "intermediary" between the foreign client and the media owners in terms of Section 2(13) of Integrated Goods and Services Tax Act, 2017 (hereinafter referred to as the "IGST Act"), thereby resulting in determination of place of supply under Section 13(8)(b) of the IGST Act?

b. Whether the representative of foreign client in India or the target audience of the advertisement in India can be considered as the recipient of the services being supplied by the advertising company under Section 2(93) of CGST Act?

c. Whether the advertising services provided by the advertising companies to foreign clients can be considered as performance-based services as per Section 13(3)of the IGST Act?

3. Clarification:

3.1 Issue 1—Whether the advertising company can be considered as an "intermediary" between the foreign client and the media owners as per Section 2(13) of IGST Act?

3.1.1 As per Section 2(13) of IGST Act, read with Circular No. 159/15/2021-GST dated 20-09-2021, a broker, agent or any other person who arranges or facilitates the main supply of goods or services or both or securities and has not involved himself in the main supply on his own account is considered as intermediary.

3.1.2 In the instant scenario, it is observed that the foreign clients enter into a comprehensive agreement with advertising companies/agencies in India and outsource the entire activity of advertising services to the advertising companies/agencies. Further, these advertising companies/agencies enter into an agreement with the media owners in India for implementing the said media plan and procurement of media space for airing or releasing or printing advertisement.

3.1.3 The advertising agency, in this case, enters into two agreements:

i. With the client located outside India for providing a one stop solution starting from designing the advertisement to its display in the media as agreed to with the client. The advertising company raises invoice to its foreign client for the above advertising services and the payments of the same is received from the foreign client in foreign exchange.

ii. With the media company to procure media space for display of the advertisement and to monitor campaign progress based on data shared by the media company. The media company bills the advertising agency and the payment for same is made by the advertising agency to the media company.

3.1.4 Thus, the agreement, in the instant case, is in the nature of two distinct principal-to--principal supplies and no agreement of supply of services exists between the media company and the foreign client. The advertising company is not acting as an agent but has been contracted by the client to procure and provide certain services. The advertising agency is providing the services to the client on its own account.

3.1.5 In view of above, it is clarified that in the present scenario, the advertising company is involved in the main supply of advertising services, including resale of media space, to the foreign client on principal-to-principal basis as detailed above and does not fulfil the criteria of "intermediary" under Section 2(13) of the IGST Act.

Thus, the same cannot be considered as "intermediary" in such a scenario and accordingly, the place of supply in the instant matter cannot be linked with the location of supplier of services in terms of Section 13(8)(b) of the IGST Act.

3.2 Issue-2 Whether the representative of foreign client in India or the target audience of the advertisement in India can be considered as the "recipient" of the services being supplied by the advertising company under Section 2(93) of CGST Act?

3.2.1 As per Section 2(93)(a) of the CGST Act, the "recipient" of the services means the person who is liable to pay consideration where a consideration is payable for the supply of goods or services or both.

3.2.2 In the instant scenario, the foreign client is liable to pay the consideration to advertising company for the supply of advertising and not the consumers or the target audience that watches the advertisement in India. Further, in this case, even if a representative of the said foreign client based in India, including a subsidiary or related person of the said foreign client, is interacting with the advertising company on behalf of the said foreign client, the said representative based in India cannot be considered as a recipient of the service, if the agreement is between the foreign client and the advertising company, the invoice is being issued for the said service by the advertising company to the foreign client and the payment for the said service is received by the advertising company directly from the said foreign client. Further, the target audience of the advertisements may be based in India but such target audience cannot be considered as recipient of the said advertising services being supplied by the advertising company as per the definition of the recipient under Section 2(93) of CGST Act.

3.2.3 Therefore, in view of above, it is clarified that the recipient of the advertising services provided by the advertising company in such cases is the foreign client and not the Indian representative of the foreign client based in India or the target audience of the advertisements, as per Section 2(93) of the CGST Act, 2017.

3.3 Issue-3 Whether the advertising services provided by the advertising companies to foreign clients can be considered as performance-based services as per Section 13(3) of the IGST Act?

3.3.1 The place of supply of performance based services is provided in sub-section (3) of Section 13 of IGST Act. The provisions of Clause (a) of the said sub-section pertain to the services supplied in respect of goods which are required to be made physically available by the recipient of services to the supplier of services. However, in the instant matter, there does not appear to be any such involvement of goods which are required to be physically available with supplier of advertising services. Therefore, the said provisions of Clause (a) of the said sub-section cannot be made applicable for determination of place of supply of advertising services.

3.3.2 Further, Clause of (b) of sub-section (3) of Section 13(3)(b) of IGST Act provides that the place of supply shall be the location where the services are actually performed in case, where,

a. services are supplied to an individual,

b. represented either as the recipient of services or a person acting on behalf of the recipient, and

c. which requires the physical presence of the recipient or the person acting on his behalf, with the supplier for the supply of services.

3.2.3 In the present scenario, the supply of advertising services does not require physical presence of the recipient (foreign client or representative or a person acting on his behalf) with the advertising company for availing the said advertising services. Thus, the said supply of advertising services cannot be considered as being covered under Section 13(3)(b) of the IGST Act for being considered as the services actually performed in India in terms of the said Section.

3.3.3 Accordingly, it is clarified that the place of supply of advertising services in such cases can neither be determined as per the provision of Section 13(3)(a) nor as per the provisions of Section 13(3)(b) of IGST Act.

4. Further, it is observed that in the present scenario, the place of supply of the above-mentioned advertising services does not appear to be covered under any other provisions of sub-sections (3) to (13) of Section 13 of the IGST Act. Therefore, in view of foregoing discussion, it appears that the place of supply of the said advertising service being supplied by the advertising company to the foreign clients can only be determined as per the default provision, i.e. sub-section (2) of Section 13 of IGST Act, i.e. the place of location of the recipient of the services. Since the recipient of the advertising services in such scenario is the foreign client, who is located outside India, the place of supply of the said services appears to be the location of the said foreign client i.e. outside India as per Section 13(2) of IGST Act, and the said

service can be considered to be export of services, subject to the fulfilment of conditions mentioned in Section 2(6) of IGST Act.

5. However, there may be cases where the advertising company located in India merely acts as an agent of the foreign client in engaging with the media owner for providing media space to the foreign client. In such cases, the agreement/contract for providing the media space and broadcast of the advertisement is directly between media owner and the foreign client. The media owner directly invoices the foreign client for providing the media space and broadcast of the advertisement and the foreign client remits the payment for the said services directly to the media owner. In such instances, the services of providing media space and broadcasting the advertisement are directly provided by the media owner to the foreign client. In such cases, the advertising company is merely facilitating the provision of the said services of providing media space and broadcasting the advertisement between the foreign client and the media owner and does not provide the said services on its own account. The advertising company invoices the foreign client for the facilitation services provided by it.

5.1 Consequently, in such cases, the advertising company is an "intermediary" in accordance with Section 2(13) of the CGST Act, 2017, as elucidated in Circular No. 159/15/2021-GST dated 20-09-2021, in respect of the said services of facilitating the foreign client and accordingly, the place of supply in respect of the said services provided by the advertising company to the foreign client is determinable as per Section 13(8)(b) of IGST Act, i.e. the location of the supplier, i.e. the location of the advertising company.

6. It is requested that suitable trade notices may be issued to publicize the contents of this Circular.

7. Difficulty, if any, in the implementation of this Circular may be brought to the notice of the Board. Hindi version will follow.

Sanjay Mangal, Principal Commissioner (GST).

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No. CCT/26-4/2024-25/G/3460

Subject: Clarification on availability of input tax credit in respect of demo vehicles-reg.

Ref.: Circular No. 231/25/2024-GST dated 10th September, 2024 issued under Central Goods and Services Tax Act, 2017 by the GST Policy Wing, Central Board of Indirect Taxes and Customs, Department of Revenue, Ministry of Finance, Government of India, New Delhi.

Circular

(No. 24/2024-25-GST)

The GST Policy Wing, Central Board of Indirect Taxes and Customs, Department of Revenue, Ministry of Finance, Government of India, New Delhi has issued the above referred Circular.

For the uniformity in implementation and in exercise of the powers conferred under Section 168 of the Goa Goods and Services Tax Act, 2017 (Goa Act 4 of 2017) it is hereby directed that the Said Circular issued by the GST Policy Wing, Central Board of Indirect Taxes and Customs, Department of Revenue, Ministry of Finance, Government of India shall be applicable, *mutatis mutandis*, in implementation of the Goa Goods and Services Tax Act, 2017 (Goa Act 4 of 2017).

A copy of the above referred circular is attached herewith as Annexure.

Difficulty, if any, in implementation of this circular may please be brought to the notice of the undersigned.

Given under the seal of this office.

S. S. Gill, IAS, Commissioner of State Taxes, Goa.

Panaji, 01st November, 2024.

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ANNEXURE

Circular No. 231/25/2024-GST
F. No. CBIC-20001/6/2024-GST
Government of India
Ministry of Finance
Department of Revenue
Central Board of Indirect Taxes and Customs
GST Policy Wing
New Delhi, dated the 10th September, 2024

To,

The Pr. Chief Commissioners/Chief Commissioners/ /Principal Commissioners/Commissioners of Central Tax (All),

The Principal Directors General/Directors General (All),

Madam/Sir,

Subject: Clarification on availability of input tax credit in respect of demo vehicles-reg.

The demo vehicles are the vehicles which the authorised dealers for sale of motor vehicles are required to maintain at their sales outlet as per dealership norms and are used for providing trial run and for demonstrating features of the vehicle to the potential buyers. These vehicles are purchased

by the authorised dealers from the vehicle manufacturers against tax invoices and are typically reflected as capital assets in books of account of the authorized dealers. As per dealership norms, these vehicles may be required to be held by the authorized dealers as demo vehicle for certain mandatory period and may, thereafter, be sold by the dealer at a written down value and applicable tax is payable at that point of time.

2. Reference has been received to issue clarification regarding availability of input tax credit in respect of demo vehicles on the following issues:

i. Availability of input tax credit on demo vehicles, which are motor vehicles for transportation of passengers having approved seating capacity of not more than 13 persons (including the driver), in terms of Clause(a) of Section 17(5) of Central Goods & Services Tax Act, 2017 (hereinafter referred to as the "CGST Act").

ii. Availability of input tax credit on demo vehicles in cases where such vehicles are capitalized in the books of account by the authorized dealers.

3. In order to ensure uniformity in the implementation of the provisions of law across the field formations, the Board, in exercise of its powers conferred by section 168 (1) of the CGST Act, hereby clarifies the above issues as below.

4. Availability of input tax credit on demo vehicles, which are motor vehicles for transportation of passengers having approved seating capacity of not more than 13 persons (including the driver), in terms of Clause(a) of Section 17(5) of CGST Act.

4.1 Clause (a) of Section 17(5) of CGST Act provides that input tax credit shall not be available in respect of motor vehicles for transportation of persons having approved seating capacity of not more than 13 persons (including the driver), except when they are used for making following taxable supplies, namely:

A. further supply of such motor vehicles; or

B. transportation of passengers; or

C. imparting training on driving such motor vehicles.

4.2 The intention of law, as it appears from the use of expression 'when they are used for making the following taxable supplies' in Clause (a) of section 17(5) of CGST Act, is to exclude certain cases (based on the nature of outward taxable supplies being made using the said motor vehicle) from the restriction on availment of input tax credit in respect of the specified motor vehicles i.e. motor vehicles for transportation of persons having approved seating capacity of not more than thirteen persons (including the driver). The taxable supplies, permitted for the purpose of being excluded from the blockage of input tax credit as per provisions of Clause (a) of Section 17(5) of CGST Act, being further supply of such motor vehicles, transportation of passengers and imparting training on driving such motor vehicles.

4.3 As demo vehicles are used by authorized dealers to provide trial run and to demonstrate features of the vehicle to potential buyers, it is quite apparent that demo vehicles cannot be said to be used by the authorized dealer for providing taxable supply of transportation of passengers or imparting training on driving such motor vehicles. Therefore, demo vehicles are not covered in the exclusions specified in sub-clauses (B) and (C) of Clause (a) of Section 17(5) of CGST Act. Accordingly, it is to be seen whether or not the Demo vehicles in question can be said to be used for making "further supply of such motor vehicles", as specified in the sub-clause (A) of the Clause (a) of Section 17(5) of CGST Act.

4.4 Regarding the provision for blockage of input tax credit in respect of motor vehicles for transportation of persons having approved seating capacity of not more than thirteen persons (including the driver), the usage of the words "such motor vehicles" instead of "said motor vehicle", in sub-clause (A) of the Clause (a) of Section 17(5) of CGST Act, implies that the intention of the lawmakers was not only to exclude from the blockage of input tax credit, the motor vehicle which is itself further supplied, but also to exclude from the blockage of input tax credit, the motor vehicle which is being used for the purpose of further supply of similar type of motor vehicles. As demo vehicles are used by authorized dealers to provide trial run and to demonstrate features of the vehicle to potential buyers, it helps the potential buyers to make a decision to purchase a particular kind of motor vehicle. Therefore, as demo vehicles promote sale of similar type of motor vehicles, they can be considered to be used by the dealer for making 'further supply of such motor vehicles'. Accordingly, input tax credit in respect of demo vehicles is not blocked under Clause (a) of Section 17(5) of CGST Act, as it is excluded from such blockage in terms of sub-clause (A) of the said Clause.

4.5 There may be some cases where motor vehicles for transportation of persons having approved seating capacity of not more than thirteen

persons (including the driver) are used by an authorized dealer for purposes other than for making further supply of such motor vehicles, say for transportation of its staff employees/ /management etc. In such cases, the same cannot be said to be used for making 'further supply of such motor vehicles' and therefore, input tax credit in respect of such motor vehicles would not be excluded from blockage in terms of sub-clause (A) of Clause (a) of Section 17(5) of CGST Act.

4.6 Further, there may be cases where the authorized dealer merely acts as an agent or service provider to the vehicle manufacturer for providing marketing service, including providing facility of vehicle test drive to the potential customers of the vehicle on behalf of the manufacturer and is not directly involved in purchase and sale of the vehicles. In such cases, the sale invoice for the vehicle is directly issued by the vehicle manufacturer to the customer. For providing facility of vehicle test drive to the potential customers of the vehicle, the dealer purchases demo vehicle from the vehicle manufacturer. The dealer may sell the said demo vehicle to a customer after a specified time or kilometres as per agreement with the vehicle manufacturer on payment of applicable GST. In such a case, the authorized dealer is merely providing marketing and/or facilitation services to the vehicle manufacturer and is not making the supply of motor vehicles on his own account. Therefore, the said demo vehicle cannot be said to be used by the dealer for making further supply of such motor vehicles. Accordingly, in such cases, input tax credit in respect of such demo vehicle would not be excluded from blockage in terms of sub-clause (A) of Clause (a) of Section 17(5) of CGST Act and therefore, input tax credit on the same would not be available to the said dealer.

5. Availability of input tax credit on demo vehicles in cases where such vehicles are capitalized in the books of account by the authorized dealers.

5.1 As per provisions of Section 16(1) of CGST Act, every registered taxpayer is entitled to take input tax credit charged on any supply of goods and services made to him, where such goods or services are used in the course or furtherance of business of such person, subject to such conditions and restrictions as may be prescribed and in the manner which is specified.

5.2 Further, "goods" has been defined in Section 2(52) of CGST Act, as,

"goods" means every kind of movable property other than money and securities but includes actionable claim, growing crops, grass and things attached to or forming part of the land which are agreed to be severed before supply or under a contract of supply.

5.3 Also, Section 2(19) of CGST Act defines "capital goods" as,

"capital goods" means goods, the value of which is capitalized in the books of account of the person claiming the input tax credit and which are used or intended to be used in the course or furtherance of business.

5.4 As mentioned in paras above, as the demo vehicles are used by the authorized dealers to promote further sale of motor vehicles of the similar type and therefore, such vehicles appear to be used in the course or furtherance of business of the authorized dealers. Where such vehicles are capitalized in the books of accounts by the authorized dealer, the said vehicle falls in the definition of "capital goods" under Section 2(19) of CGST Act. As per provision of Section 16(1) of CGST Act, subject to such conditions and restrictions as may be prescribed, a recipient of goods is entitled to take input tax credit in respect of tax charged on the inward supply of any goods, which as per definition of "goods" under Section 2(52) of CGST Act, includes even capital goods. Further, Section 2(19) of CGST Act also recognizes that capital goods are used or intended to be used in the course or furtherance of business. Accordingly, availability of input tax credit on demo vehicles is not affected by way of capitalization of such vehicles in the books of account of the authorized dealers, subject to other provisions of the Act.

5.5 However, it is to be mentioned that in case of capitalization of demo vehicles, availability of input tax credit would be subject to provisions of Section 16(3) of CGST Act, which provides that where the registered person has claimed depreciation on the tax component of the cost of capital goods and plant and machinery under the Income-tax Act, 1961, the input tax credit on the said tax component shall not be allowed. It is further mentioned that in case demo vehicle, which is capitalized, is subsequently sold by the authorized dealer, the authorized dealer shall have to pay an amount or tax as per provisions of Section 18(6) of CGST Act read with Rule 44(6) of the Central Goods and Service Tax Rules, 2017.

6. It is requested that suitable trade notices may be issued to publicize the contents of this Circular.

7. Difficulty, if any, in the implementation of this Circular may be brought to the notice of the Board. Hindi version would follow.

Sanjay Mangal, Principal Commissioner (GST).

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No. CCT/26-4/2024-25/G/3461

Subject: Clarification on place of supply of data hosting services provided by service providers located in India to cloud computing service providers located outside India-reg.

Ref.: Circular No. 232/26/2024-GST dated 10th September, 2024 issued under Central Goods and Services Tax Act, 2017 by the GST Policy Wing, Central Board of Indirect Taxes and Customs, Department of Revenue, Ministry of Finance, Government of India, New Delhi.

Circular
(No. 25/2024-25-GST)

The GST Policy Wing, Central Board of Indirect Taxes and Customs, Department of Revenue, Ministry of Finance, Government of India, New Delhi has issued the above referred Circular.

For the uniformity in implementation and in exercise of the powers conferred under Section 168 of the Goa Goods and Services Tax Act, 2017 (Goa Act 4 of 2017) it is hereby directed that the Said Circular issued by the GST Policy Wing, Central Board of Indirect Taxes and Customs, Department of Revenue, Ministry of Finance, Government of India shall be applicable, *mutatis mutandis*, in implementation of the Goa Goods and Services Tax Act, 2017 (Goa Act 4 of 2017).

A copy of the above referred circular is attached herewith as Annexure.

Difficulty, if any, in implementation of this circular may please be brought to the notice of the undersigned.

Given under the seal of this office.

S. S. Gill, IAS, Commissioner of State Taxes, Goa.

Panaji, 01st November, 2024.

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ANNEXURE

Circular No. 232/26/2024-GST
F. No. CBIC-20001/6/2024-GST
Government of India
Ministry of Finance
Department of Revenue
Central Board of Indirect Taxes and Customs
GST Policy Wing
New Delhi, dated the 10th September, 2024

To,

The Pr. Chief Commissioners/Chief Commissioners/ Principal Commissioners/Commissioners of Central Tax (All),

The Principal Directors General/Directors General (All).

Madam/Sir,

Subject: Clarification on place of supply of data hosting services provided by service providers located in India to cloud computing service providers located outside India-reg.

Representations have been received from the trade and industry seeking clarification on the place of supply in case of data hosting services provided by service providers located in India to cloud computing service providers located outside India.

2. Issue:

2.1 It has been represented that some field formations are of the view that the place of supply of data hosting services provided by the service providers located in India to cloud computing service providers located outside India is the location of data hosting service provider in India and therefore, the benefit of export of services is not available on such supply of data hosting services.

2.2 Thus, clarification has been sought in respect of the following issues—

(i) Whether data hosting service provider qualifies as 'Intermediary' between the cloud computing service provider and their end customers/users/subscribers as per Section 2(13) of the Integrated Goods and Services Tax Act, 2017 (hereinafter referred to as the "IGST Act") and whether the services provided by data hosting service provider to cloud computing service providers are covered as intermediary services and whether the place of supply of the same is to be determined as per Section 13(8)(b) of IGST Act.

(ii) Whether the data hosting services are provided in relation to goods "made available" by recipient of services to service provider for supply of such services and whether the place of supply of the same is to be determined as per Section 13(3)(a) of the IGST Act.

(iii) Whether the data hosting services are provided directly in relation to "immovable

property" and whether the place of supply of the same is to be determined as per Section 13(4) of the IGST Act.

3. Clarification:

3.1 Whether data hosting service provider qualifies as 'Intermediary' between the cloud computing service provider and their end customers/users/subscribers as per Section 2(13) of the IGST Act and whether the services provided by data hosting service provider to cloud computing service providers are covered as intermediary services and whether the place of supply of the same is to be determined as per Section 13(8)(b) of IGST Act.

3.1.1 As per Section 2(13) of the IGST Act, read with Circular No. 159/15/2021-GST dated 20-09-2021, a broker, agent or any other person who arranges or facilitates the main supply of goods or services or both or securities and has not involved himself in the main supply on his own account is considered as 'intermediary'. Persons who supply goods or services, or both on their own account are not covered in the definition of "intermediary".

3.1.2 The cloud computing service providers generally enter into contract with data hosting service providers to use their data centres for hosting cloud computing services. Data hosting service provider either owns premises for data centre or operates data centre on leased premises, procures infrastructure and human resource, handles operations like infrastructure monitoring, IT management and equipment maintenance, etc. to provide the said supply of data hosting services to the cloud computing service providers. The data hosting service provider generally handles all aspects of data centre like rent, software and hardware infrastructure, power, net connectivity, security, human resource, etc. Importantly, the data hosting service providers do not deal with end users/ consumers of cloud computing services and may not even know about the end users.

3.1.3 It is observed that data hosting service provider provides data hosting services to the cloud computing service provider on a web platform through computing and networking equipment for the purpose of collecting, storing, processing, distributing, or allowing access to large amounts of data. The cloud computing service provider provides cloud-based applications and software services to various end users/customers/subscribers for data storage, analytics, artificial intelligence, machine learning, processing, database analysis and deployment services, etc. The end users/customers/ /subscribers access cloud computing services seamlessly over the internet through technology hosted on data centers. There appears to be no contact between data hosting service provider and the end users/consumers/subscribers of the overseas cloud computing service provider. Thus, it is observed that the data hosting service provider provides data hosting services to the cloud computing service provider on principal-to--principal basis on his own account and is not acting as a broker or agent for facilitating supply of service between cloud computing service providers and their end users/consumers.

3.1.4 Accordingly, it is clarified that in such a scenario, the services provided by data hosting service provider to its overseas cloud computing service providers cannot be considered as intermediary services and hence, the place of supply of the same cannot be determined as per Section 13(8)(b) of IGST Act.

3.2 Whether the data hosting services are provided in relation to goods "made available" by recipient of services to service provider for supply of such services and whether the place of supply of the same is to be determined as per Section 13(3)(a) of the IGST Act, 2017.

3.2.1 Section 13(3)(a) of the IGST Act provides that in cases where the services are supplied in respect of goods which are made physically available by the recipient of services to service provider, the place of supply will be location of service provider.

3.2.2 In the instant scenario, it is observed that the data hosting service provider, as an independent entity, is providing seamless data hosting services to the overseas cloud computing service providers, through the premises, hardware and personnel at the data centre which not only comprises of hardware but also other essential infrastructure (without which the hardware infrastructure cannot be utilized) like ventilation and cooling system, uninterrupted power supply, software, network connectivity, security protocols, etc. which are owned by the data hosting service providers and are independently handled, operated, monitored and maintained by them. These data hosting service providers are charging their clients (cloud computing service providers), the charges for the services being provided by them to these clients as consideration depending on the specific terms and conditions as per agreements between them. From the above, it is observed that throughout the provision of the said services, the data hosting service provider owns premises for data center or

operates data center on leased premises, independently handles, monitors and maintains the premises, hardware and software infrastructure, personnel and in such scenario, the overseas cloud computing service providers cannot be considered to own the said infrastructure and make the same physically available to the data hosting service provider for supply of the said services.

3.2.3 In view of above, it is clarified that data hosting services provided by data hosting service provider to the said cloud computing service providers cannot be considered in relation to the goods "made available" by the said cloud computing service providers to the data hosting service provider in India and hence, the place of supply of the same cannot be determined under Section 13(3)(a) of the IGST Act.

3.2.4 There may be some cases where some of the hardware required for data hosting service is provided by the recipient of the service, i.e., the cloud computing service provider to the data hosting service provider. Even in these cases, data hosting service provider handles all aspects of data centre, like arranging for the premises, making available software and other hardware infrastructure, power, net connectivity, security, human resource, maintenance etc., for providing data hosting services to the cloud computing service provider. Accordingly, in such cases, though the data hosting services is being provided by the data hosting service provider *inter-alia* using the hardware made available by the cloud computing service provider, it cannot be said that data hosting service are being provided in relation to the said goods made available by the cloud computing service provider to them. Accordingly, even in these cases, place of supply cannot be determined under Section 13(3)(a) of the IGST Act.

3.3 Whether the data hosting services are provided directly in relation to "immovable property" and whether the place of supply of the same is to be determined as per Section 13(4) of the IGST Act.

3.3.1 Section 13(4) of the IGST Act provides for the place of supply where services supplied are directly in relation to immovable property.

3.3.2 In the present scenario, it is observed that the data hosting service providers either use owned or leased premises for keeping IT infrastructure and other hardware required for providing data hosting services. They also procure hardware, uninterrupted power supplies, backup generators, ventilation and cooling equipment, network connectivity, fire suppression systems, security, human resource, etc.; handle operations like server monitoring, IT management and equipment maintenance, including repairs and replacements of the same, for providing data hosting services to their clients.

3.3.3 Thus, it is observed that data hosting services are not passive supply of a service directly in respect of immovable property but are regarding supply of a comprehensive service related to data hosting which involves the supply of various services by the data hosting service provider like operating data centre, ensuring uninterrupted power supplies, backup generators, network connectivity, backup facility, firewall services, and monitoring and surveillance service for ensuring continuous operations of the servers and related hardware, etc. which are essential for cloud computing service provider to provide cloud computing services to the end users/customer/subscribers.

3.3.4 Accordingly, it is clarified that in such a scenario, the data hosting services cannot be considered as the services provided directly in relation to immovable property or physical premises and hence, the place of supply of such services cannot be determined under Section 13(4) of IGST Act.

4. Further, the place of supply for the data hosting services provided by data hosting service provider located in India to overseas cloud computing service providers does not appear to fit into any of the specific provisions outlined in Sections 13(3) to 13(13) of the IGST Act. Therefore, the place of supply in such cases needs to be determined according to the default provision under Section 13(2) of the IGST Act, i.e. the location of the recipient of the services. Where the cloud computing service provider receiving the data hosting services are located outside India, the place of supply will be considered to be outside India according to Section 13(2) of the IGST Act.

5. Accordingly, supply of data hosting services being provided by a data hosting service provider located in India to an overseas cloud computing entity can be considered as export of services, subject to the fulfilment of the other conditions mentioned in Section 2(6) of IGST Act.

6. It is requested that suitable trade notices may be issued to publicize the contents of this Circular.

7. Difficulty, if any, in the implementation of this Circular may be brought to the notice of the Board. Hindi version will follow.

Sanjay Mangal, Principal Commissioner (GST).

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No. CCT/26-4/2024-25/G/3462

Subject: Clarification regarding regularization of refund of IGST availed in contravention of Rule 96(10) of CGST Rules, 2017, in cases where the exporters had imported certain inputs without payment of integrated taxes and compensation cess-regarding.

Ref.: Circular No. 233/27/2024-GST dated 10th September, 2024 issued under Central Goods and Services Tax Act, 2017 by the GST Policy Wing, Central Board of Indirect Taxes and Customs, Department of Revenue, Ministry of Finance, Government of India, New Delhi.

Circular

(No. 25/2024-25-GST)

The GST Policy Wing, Central Board of Indirect Taxes and Customs, Department of Revenue, Ministry of Finance, Government of India, New Delhi has issued the above referred Circular.

For the uniformity in implementation and in exercise of the powers conferred under Section 168 of the Goa Goods and Services Tax Act, 2017 (Goa Act 4 of 2017) it is hereby directed that the Said Circular issued by the GST Policy Wing, Central Board of Indirect Taxes and Customs, Department of Revenue, Ministry of Finance, Government of India shall be applicable, *mutatis mutandis*, in implementation of the Goa Goods and Services Tax Act, 2017 (Goa Act 4 of 2017).

A copy of the above referred circular is attached herewith as Annexure.

Difficulty, if any, in implementation of this circular may please be brought to the notice of the undersigned.

Given under the seal of this office.

S. S. Gill, IAS, Commissioner of State Taxes, Goa.

Panaji, 01st November, 2024.

ANNEXURE

Circular No. 233/27/2024-GST
F. No. CBIC-20001/6/2024-GST
Government of India
Ministry of Finance
Department of Revenue
Central Board of Indirect Taxes and Customs
GST Policy Wing

New Delhi, dated the 10th September, 2024

To,

The Pr. Chief Commissioners/Chief Commissioners/ /Principal Commissioners/Commissioners of Central Tax and Central Tax (Audit) (All),

The Principal Directors General/Directors General (All).

Madam/Sir,

Subject: Clarification regarding regularization of refund of IGST availed in contravention of Rule 96(10) of CGST Rules, 2017, in cases where the exporters had imported certain inputs without payment of integrated taxes and compensation cess-regarding.

Sub-rule (10) of Rule 96 of Central Goods and Services Tax Rules, 2017 (hereinafter referred to as "CGST Rules") provides for a bar on availment of the refund of integrated tax (IGST) paid on export of goods or services, if benefits of certain concessional/ /exemption notifications, as specified in the said sub- -rule, have been availed on inputs/raw materials imported or procured domestically. In this regard, references have been received from the field formations and trade/industry wherein clarification has been sought on whether refund of integrated tax paid on exports of goods by a registered person can be regularized in a case where the registered person had initially imported inputs without payment of integrated tax and compensation cess, by availing the benefits under Notification No. 78/ /2017-Customs dated 13-10-2017 or Notification No. 79/2017-Customs dated 13-10-2017, but subsequently, at a later date, the said person has either paid the IGST and compensation cess, along with interest, on such imported inputs or is now willing to pay such IGST and compensation cess, along with interest.

2. The issue has been examined and in order to clarify the issue and to ensure uniformity in the implementation of the provisions of law across the field formations, the Board, in exercise of its powers conferred by Section 168 (1) of the Central Goods and Services Tax Act, 2017 (hereinafter referred to as "CGST Act"), hereby clarifies the following:

2.1 Vide Notification No. 16/2020-CT dated 23-03-2020, an Explanation was inserted in sub-rule (10) of Rule 96 of CGST Rules retrospectively with effect from 23-10-2017, which reads as follows:

"Explanation.— For the purpose of this sub-rule, the benefit of the notifications mentioned therein shall not be considered to have been availed only where the registered person has paid Integrated Goods and Services Tax and Compensation Cess on inputs and has availed exemption of only Basic Customs Duty (BCD) under the said notifications."

2.2 A bare perusal of the said Explanation, which was inserted with retrospective effect, reveals that in cases where the benefits of these exemption notifications have not been availed in respect of IGST and compensation cess, it shall be deemed that benefit of the said notifications has not been availed for the purpose of sub-rule (10) of Rule 96 of CGST Rules. Therefore, extension of logic given in the said Explanation may lead to a view that in cases where inputs were initially imported without payment of integrated tax and compensation cess but subsequently, IGST and compensation cess on such imported inputs is paid at a later date, along with interest, then in such cases, it can be considered that the benefits of notifications mentioned in Clause (b) of sub-rule (10) of Rule 96 of CGST Rules have not been availed for the purpose of said sub-rule. Accordingly, refund of IGST claimed on exports made with payment of Integrated tax in such cases may not be considered to be in contravention of provisions of sub-rule (10) of Rule 96 of CGST Rules.

2.3 In view of the above, it is clarified that where the inputs were initially imported without payment of integrated tax and compensation cess by availing benefits under Notification No. 78/2017-Customs dated 13-10-2017 or Notification No. 79/2017-Customs dated 13-10-2017, but subsequently, IGST and compensation cess on such imported inputs are paid at a later date, along with interest, and the Bill of Entry in respect of the import of the said inputs is got reassessed through the jurisdictional Customs authorities to this effect, then the IGST, paid on exports of goods, refunded to the said exporter shall not be considered to be in contravention of provisions of sub-rule (10) of Rule 96 of CGST Rules.

3. It is requested that suitable trade notices may be issued to publicize the contents of this Circular.

4. Difficulty, if any, in implementation of the above instructions may please be brought to the notice of the Board. Hindi version would follow.

Sanjay Mangal, Principal Commissioner (GST).

No. CCT/26-4/2024-25/G/3463

Subject: Clarifications regarding applicability of GST on certain services–reg.

Ref.: Circular No. 234/28/2024-GST dated 11th October, 2024 issued under Central Goods and Services Tax Act, 2017 by the Tax Research Unit, Department of Revenue, Ministry of Finance, Government of India, New Delhi.

Circular

(No. 27/2024-25-GST)

The Tax Research Unit, Central Board of Indirect Taxes and Customs, Department of Revenue, Ministry of Finance, Government of India, New Delhi has issued the above referred Circular.

For the uniformity in implementation and in exercise of the powers conferred under Section 168 of the Goa Goods and Services Tax Act, 2017 (Goa Act 4 of 2017) it is hereby directed that the Said Circular issued by the Tax Research Unit, Central Board of Indirect Taxes and Customs, Department of Revenue, Ministry of Finance, Government of India shall be applicable, *mutatis mutandis*, in implementation of the Goa Goods and Services Tax Act, 2017 (Goa Act 4 of 2017).

A copy of the above referred circular is attached herewith as Annexure.

Difficulty, if any, in implementation of this circular may please be brought to the notice of the undersigned.

Given under the seal of this office.

S. S. Gill, IAS, Commissioner of State Taxes, Goa.

Panaji, 01st November, 2024.

ANNEXURE

Circular No. 234/28/2024-GST

F. No. CBIC-190354/149/2024-GST
Government of India
Ministry of Finance
Department of Revenue
(Taxes Research Unit)
North Block, New Delhi, dated the 11th October, 2024

To,

The Pr. Chief Commissioners/Chief Commissioners/ Principal Commissioners/Commissioners of Central Tax (All)/The Principal Director Generals/Director Generals (All).

Madam/Sir,

Subject: Clarifications regarding applicability of GST on certain services–reg.

Based on the recommendations of the GST Council in its 54th meeting held on 9th September, 2024, at New Delhi, in exercise of the powers conferred under Section 168(1) of the Central Goods and Services Tax Act, 2017, clarifications on the following issues are being issued through this Circular as under:

2. Applicability of GST on the service of affiliation provided by universities to colleges:

2.1 Representations have been received seeking clarification on the applicability of GST on the service of affiliation provided by universities to colleges.

2.2 The activity of affiliation is to monitor and ensure whether the institution possesses the required infrastructure in terms of space, technical prowess, financial liquidity, faculty strength, etc. and is thereby eligible for the privileges to conduct the course/program of study for the degree/title extended by the University to the students enrolled in such institutions. The affiliation services provided by the universities to colleges are not by way of services related to the admission of students to such colleges or the conduct of examinations by such colleges.

2.3 Thus, as recommended by the 54th GST Council, it is hereby clarified that the affiliation services provided by universities to their constituent colleges are not covered within the ambit of exemptions provided to educational institutions in the notification No. 12/2017-CT(R) dated 28-06-2017 and GST at the rate of 18% is applicable on the affiliation services provided by the universities.

3. Applicability of GST on the service of affiliation provided by Central and State Educational Boards or Councils, or other similar bodies, to schools:

3.1 Representations have been received to clarify the applicability of GST on the service of affiliation provided by the Central and State Educational Boards or Councils, or other similar bodies, to schools and to regularize the payment of tax on such services for the past period.

3.2 The activity of affiliation carried out by educational boards or councils, or other similar bodies, is to monitor and ensure whether the schools possess the required infrastructure, finances, faculty strength etc. and are thereby eligible for the privileges to operate under the aegis of said boards or councils. The services of affiliation provided to schools by educational boards or councils, or other similar bodies, are not by way of services related to the admission of students to such schools or the conduct of examinations by such schools.

3.3 The matter was placed before the GST Council in its 54th meeting held on 09th September, 2024, and the GST Council recommended to clarify that such services of affiliation, provided to schools by Central or State educational boards or councils, or other similar bodies, by whatever name called, are taxable. At the same time, the GST Council recommended exempting the supply of affiliation services provided by Central and State educational boards or Councils, or other similar bodies, by whatever name called to Government schools i.e. schools established, owned or controlled by the Central Government, State Government, Union Territory, local authority, Governmental authority or Government entity. The same has been exempted w.e.f. 10-10-2024 vide notification No. 08/2024--Central Tax (Rate) dated 08-10-2024.

3.4 In its 54th meeting, the GST Council further recommended regularizing the GST liability on such services provided to all schools for the period from 01-07-2017 to 17-06-2021, i.e., the date of issuance of Circular No. 151/07/2021-GST wherein accreditation services of boards are clarified to be taxable at the rate of 18%.

3.5 Therefore, as recommended by the GST Council, it is clarified that services of affiliation, provided to schools by Central or State educational boards or councils, or other similar bodies, by whatever name called, are taxable. Further, as recommended by the Council, the payment of GST on the services of affiliation provided by Central and State educational boards or Councils, or other similar bodies, to all schools is regularized on 'as is where is' basis for the period from 01-07-2017 to 17-06-2021.

4. Applicability of GST on the Directorate General of Civil Aviation (DGCA) approved flying training courses conducted by Flying Training Organizations approved by the DGCA:

4.1 Representations have been received regarding the applicability of GST on the DGCA-approved flying training courses conducted by Flying Training Organizations (FTOs) which are approved by the Directorate General of Civil Aviation (DGCA). The same has been examined.

4.2 Under GST Law, vide Sl. No. 66 of the notification No. 12/2017-Central Tax (Rate) dated 28-06-2017, services provided by educational institutions to its students, faculty and staff are exempt from levy of GST. In the above notification, "educational institution" has been defined to mean an institution providing services by way of education as a part of a curriculum for obtaining a qualification recognized by any law for the time being in force.

4.3 In exercise of the power vested by Section 5 of the Aircraft Act, 1934, the Central Government has made the Aircraft Rules, 1937, which, inter-alia, provide for 'approved training', i.e. training the curriculum of which has been approved by the DGCA, and 'approved training organization', i.e. a flying training organization which shall obtain the approval of DGCA before the students are enrolled to acquire flying experience. The said rules further state that flying experience required for the issue of private pilot and commercial pilot licenses shall be acquired at the Flying Training Organization (FTO) approved/ /recognized by the DGCA. The Civil Aviation Requirements (CAR) issued under the said rules also provide for a completion certificate to be issued by an approved FTO to each student who completes its approved course of training.

4.4 It is evident from the above that the DGCA not only approves FTOs but also flying training courses and mandates the requirement of course completion certificates to be issued to successful candidates in terms of the Aircraft Act, 1934 and the rules prescribed thereunder. Therefore, the approved flying training courses conducted by F'TOs approved by DGCA, wherein the DGCA mandates the requirement of a completion certificate, are covered under Sl. No. 66 of Notification No. 12/2017-Central Tax (Rate) dated 28-06-2017 and are hence, exempt.

5. Regularizing payment of GST on transport of passengers by helicopter:

5.1 54th GST Council has recommended that the GST rate on transportation of passengers, with or without accompanied baggage, by air, in a helicopter on seat share basis may be notified at 5%. Accordingly, notification No. 07/2024-Central Tax (Rate) dated 08-10-2024 effective from 10-10-2024 has been issued.

5.2 The Council further recommended to regularize payment of GST on transportation of passengers, with or without accompanied baggage, by air, in a helicopter on seat share basis on 'as is where is' basis.

5.3 In addition to above, the Council also recommended to clarify that charter of helicopter would continue to attract GST at the rate of 18%.

5.4 Thus, as recommended by the 54th GST Council, payment of GST on transportation of passengers, with or without accompanied baggage, by air, in a helicopter on seat share basis is hereby regularized on 'as is where is' basis for the period from 01-07-2017 to 09-10-2024.

5.5 Further, as recommended by the 54th GST Council, it is hereby clarified that transport of passengers by helicopter on other than seat share basis i.e., for charter operations will continue to attract GST at the rate of 18%.

6. Whether incidental/ancillary services such as loading/unloading, packing, unpacking, transshipment, temporary warehousing etc., provided in relation to transportation of goods by road is to be treated as part of Goods Transport Agency service, being composite supply, or these services are to be treated as separate independent supplies:

6.1 Representations have been received to clarify whether incidental/ancillary services such as loading/unloading, packing, unpacking, transshipment, temporary warehousing etc., provided in relation to transportation of goods by road is to be treated as part of Goods Transport Agency (GTA) service, being composite supply, or these services are to be treated as separate independent supplies.

6.2 It has been brought to notice that enforcement agencies are raising demands for such services holding them leviable to GST at the rate of 18% by interpreting last para of Question No. 6 of the FAQ issued by CBIC which states that "*If such incidental services are provided as separate services and charged separately, whether in the same invoice or separate invoices, they shall be treated as separate supplies",* to mean that if a GTA shows packing charges, loading, unloading charges etc., separately in the invoice, the GTA becomes liable to pay GST at the rate of 18% on these services by treating them as cargo handling services.

6.3 After deliberations on the issue and based on recommendations of the 54th GST Council, it is hereby clarified that ancillary or incidental services provided by GTA in the course of transportation of goods by road, such as loading/unloading, packing/

/unpacking, transshipment, temporary warehousing etc. will be treated as composite supply of transport of goods. The method of invoicing used by GTAs will not generally alter the nature of the composite supply of service. However, if such services are not provided in the course of transportation of goods and are invoiced separately, then these services will not be treated as composite supply of transport of goods.

7. Regularizing payment of GST on import of services by an establishment of a foreign airlines company from a related person or any of its establishment outside India, when made without consideration:

7.1 54th GST Council has recommended to exempt import of services by an establishment of a foreign airlines company from a related person or any of its establishment outside India, when made without consideration. Accordingly, notification No. 08/ /2024-Integarted Tax (Rate) dated 08-10-2024 effective from 10-10-2024 has been issued.

7.2 The Council further recommended to regularize payment of GST on import of services by an establishment of a foreign airlines company from a related person or any of its establishment outside India, when made without consideration for the past period on 'as is where is' basis.

7.3 Therefore, on recommendations of the 54th GST Council, the payment of GST on import of services by an establishment of a foreign airlines company from a related person or any of its establishment outside India, when made without consideration is hereby regularized for the period from 01-07-2017 to 09-10-2024 on 'as is where is' basis.

8. Applicability of GST on Preferential Location Charges (PLC) collected alongwith consideration for sale/transfer of residential/commercial properties:

8.1 Allowing choice of location of apartment is integral part of supply of construction services and therefore, location charge is nothing but part of consideration charged for supply of construction services before issuance of completion certificate. Being charged along with supply of construction services for the apartment, the same attract GST at same rate as of construction services before issuance of completion certificate.

8.2 Therefore, based on the recommendations of the 54th GST Council, it is hereby clarified that location charges or Preferential Location Charges (PLC) paid along with the consideration for the construction services of residential/commercial/ industrial complex forms part of composite supply where supply of construction services is the main service and PLC is naturally bundled with it and are eligible for same tax treatment as the main supply of construction service.

9. Regularizing payment of GST on certain support services provided by an electricity transmission or distribution utility:

9.1 GST Council in its 54th meeting held on 09th September, 2024 has recommended to exempt supply of services by way of providing metering equipment on rent, testing for meters/transformers/capacitors etc., releasing electricity connection, shifting of meters/service lines, issuing duplicate bills etc., which are incidental or ancillary to the supply of transmission and distribution of electricity provided by transmission and distribution utilities to their consumers.

9.2 The same have been exempted vide notification No. 08/2024-Central Tax (Rate) dated 08-10-2024 effective from 10-10-2024.

9.3 The GST Council in its 54th meeting has also recommended to regularize the payment of GST for supply of such services for the period i.e., from 01-07-2017 to 09-10-2024 on 'as is where is' basis.

9.4 Therefore, as recommended by the 54th GST Council, the payment of GST on services provided by an electricity transmission or distribution utility which are incidental or ancillary to the supply of transmission and distribution of electricity by such utility, such as those listed in para 9.1 above is hereby regularized on 'as is where is' basis from 01-07-2017 to 09-10-2024.

10. Regularizing payment of GST on services of film distributors or sub-distributors who act on a principal basis to acquire and distribute films:

10.1 Representations have been received to clarify regarding the GST liability for the period from 01-07-2017 to 01-10-2021 on transaction between distributors and exhibitors wherein the distributors grant the theatrical rights to the exhibition centers. Field formations have viewed that such transaction are classifiable under SAC 9996 and attracts GST at the rate of 18%.

10.2 Prior to 1st October, 2021, GST at the rate of 18% was leviable on "*Motion Picture, video tape and television programme distribution services"* under Heading 9996 whereas 12% rate of GST was leviable on *"temporary or permanent transfer or permitting the use or enjoyment of intellectual property right in respect of goods other than IT technology software"* under Heading 9973. It was observed that both

entries apparently covered services by way of licensing of rights to broad cast or show films. This issue was discussed in the 45th GST Council meeting held on 17-09-2021 wherein, the Council recommended to keep a uniform rate of 18% on both these entries with effect from 01-10-2021.

10.3 The GST Council in its 54th meeting held on 09th September, 2024 has recommended to regularize the payment of GST on transaction between distributors and exhibitors where in the distributors grant the theatrical rights to the exhibition centers on 'as is where is' basis from 01-07-2017 to 30-09-2021.

10.4 Therefore, as recommended by the GST Council, the payment of GST on transaction between distributors and exhibitors where in the distributors grant the theatrical rights to the exhibition centers is regularized for the period from 01-07-2017 to 30-09-2021 on 'as is where is' basis.

11. Difficulties, if any, in the implementation of this circular may be brought to the notice of the Board.

Sachin Jain, Joint Secretary, TRU-II.

No. CCT/26-4/2024-25/G/3464

Subject: Clarification regarding GST rates & classification (goods) based on the recommendations of the GST Council in its 54th meeting held on 9th September, 2024, at New Delhi—reg.

Ref.: Circular No. 235/29/2024-GST dated 11th October, 2024 issued under Central Goods and Services Tax Act, 2017 by the Tax Research Unit, Department of Revenue, Ministry of Finance, Government of India, New Delhi.

Circular

(No. 28/2024-25-GST)

The Tax Research Unit, Central Board of Indirect Taxes and Customs, Department of Revenue, Ministry of Finance, Government of India, New Delhi has issued the above referred Circular.

For the uniformity in implementation and in exercise of the powers conferred under Section 168 of the Goa Goods and Services Tax Act, 2017 (Goa Act 4 of 2017) it is hereby directed that the Said Circular issued by the Tax Research Unit, Central Board of Indirect Taxes and Customs, Department of Revenue, Ministry of Finance, Government of India shall be applicable, *mutatis mutandis*, in implementation of the Goa Goods and Services Tax Act, 2017 (Goa Act 4 of 2017).

A copy of the above referred circular is attached herewith as Annexure.

Difficulty, if any, in implementation of this circular may please be brought to the notice of the undersigned.

Given under the seal of this office.

S. S. Gill, IAS, Commissioner of State Taxes, Goa.

Panaji, 1st November, 2024.

ANNEXURE

Circular No. 235/29/2024-GST

F. No. CBIC-190354/149/2024-TO(TRU-II)-CBEC
Government of India
Ministry of Finance
Department of Revenue
(Tax Research Unit)
North Block, New Delhi, dated the 11th October, 2024

To,

The Principal Chief Commissioners/Principal Directors General,

The Chief Commissioners/Directors General,

The Principal Commissioners/Commissioners of Central Excise & Central Tax.

Subject: Clarification regarding GST rates & classification (goods) based on the recommendations of the GST Council in its 54th meeting held on 9th September, 2024, at New Delhi-reg.

Madam/Sir,

Based on the recommendations of the GST Council in its 54th meeting held on 9th September, 2024, at New Delhi, in exercise of the powers conferred under Section 168(1) of the Central Goods and Services Tax Act, 2017, the Board hereby clarifies the following issues through this circular for the purpose of uniformity in their implementation:

1. Clarification regarding GST rate on Extruded/ /Expanded Savoury food products:

1.1 Representations were received seeking clarification regarding appropriate classification and whether savoury or salted extruded snack pellets are classifiable under HS 2106 as Namkeens due to disputes in the field. Based on the recommendations of GST Council, with effect from 10-10-2024, extruded or expanded products, savoury or salted (other than un-fried or un-cooked snack pellets, by whatever name called, manufactured through process of extrusion), falling under HS 1905 90 30 attract GST at the rate of 12% vide entry 32C

of Schedule II of Notification 1/2017-Central Tax (Rate) dated the 28th June, 2017 at par with namkeens, bhujia, mixture, chabena (pre-packaged and labelled) and similar edible preparations in ready for consumption form which are classifiable under HS 2106 90 of entry 46 of Schedule II of Notification 1/2017-Central Tax (Rate) dated the 28th June, 2017. The GST rate of 5% continue on un-fried or un-cooked snack pellets, by whatever name called, manufactured through process of extrusion.

1.2 However, it is clarified that the reduced GST rate of 12% on extruded or expanded products, savoury or salted (other than un-fried or un-cooked snack pellets, by whatever name called, manufactured through process of extrusion) falling under HS 1905 90 30 shall apply prospectively from the date of effect of the said notification. For the past period, 18% GST shall be payable.

2. Clarification regarding GST rate on Roof Mounted Package Unit (RMPU) Air Conditioning Machines for Railways:

2.1 Representations have been received regarding classification of Roof mounted air conditioners for Railways as to whether these goods are to be classified under HS 8415 with 28% GST rate or HS 8607 with 18% GST.

2.2 In this regard Goods falling under heading 8415 (including air conditioning machines) attract a GST rate of 28% vide S. No. 119 of Schedule IV of Notification No. 01/2017-CT (Rate) dated 28-06-2017 (as amended). The goods falling under heading 8607 (including parts of railways or tramway locomotives) attract a GST rate of 18% vide S. No. 398G of Schedule III of Notification No. 01/2017-CT (Rate) dated 28-06-2017 (as amended). Machines and apparatus of heading 8415, which include Air conditioning machines, are excluded from the ambit of 'parts' covered under heading 8607 as per Section note 2 of Section XVII of Customs Tariff Act, 1975. From a conjoint reading of Note 2 and Note 3 of the Section notes for the Section XVII, it is clear that goods of heading 8401 to 8479 (including 8415--Air Conditioning Machines) are excluded from the ambit of parts covered under Chapter 86.

2.3 Although there is no ambiguity in the classification, to make it explicitly clear, it is clarified that the Roof Mounted Package Unit (RMPU) Air Conditioning Machines for Railways are classified under HS 8415.

3. Clarification regarding GST rate on Car and Motor cycle seats:

3.1 Representations were received seeking clarification regarding classification of seats meant for four wheeled cars and two-wheelers and the consequent GST rate on seats meant for four wheeled cars and two-wheelers.

3.2 With regards to seats for two wheelers, it is pertinent to note that the Explanatory Note for HS 9401 has specifically excluded items under HS 8714 (includes parts and accessories of two wheelers). The explanatory note for HS 8714 has a list of inclusions, which has mention of Saddles (seats). Thus, for two wheelers (HS 8711), the seats would be classifiable under HS 8714 attracting GST rate of 28% vide S. No. 174 of Schedule IV of Notification No. 1/2017-Central Tax (Rate) dated 28th June, 2017 (as amended).

3.3 As regards seats for 4 wheeled vehicles, HS 9401 covers 'Seats, whether or not convertible into beds and parts thereof' (Tariff Item 9401 20 00 specifically covers seats of a kind used for motor vehicle). The Explanatory Note for this heading has also mentioned that seats for vehicles are covered under the ambit of HS 9401. Further, the Explanatory Notes to Chapter 94 have a list of exclusions that are not to be classified under the said Chapter. This list of exclusions does not mention seats meant for vehicles. Thus, it is seen that car seat would fall under HS 9401.

3.4 Thus, the seat assembly for 4 wheelers are classifiable under HS 9401 while seats for 2-wheelers are classifiable under HS 8714.There is no ambiguity in the GST rates on the said goods-car seats which are classifiable under 9401 attract GST @ 18 % vide S. No. 435A of Schedule III of Notification No. 1/2017-Central Tax (Rate) dated 28th June, 2017 (as amended) and seats meant for two wheelers are classifiable under HS 8714 which attract a GST rate of 28%.

3.5 In order to bring parity with seats of motorcycles (classified under HS 8714) which already attract a GST rate of 28%, based on the recommendation of the Council, with effect from 10-10-2024 vide S. No. 210A of Schedule IV of notification No. 1/2017-Central Tax (Rate) dated 28th June, 2017 (as amended), car seats classifiable under HS 9401 attract GST at the rate of 28%. It is clarified that the 28% rate on car seats classifiable under HS 9401 is applicable prospectively, that is, from the date of effect of the said notification.

4. Field formations under your charge may be instructed accordingly.

5. Difficulty, if any, in the implementation of this circular may be brought to the notice of the Board.

Limatula Yaden, Joint Secretary (TRU).

No. CCT/26-4/2024-25/G/3465

Subject: Clarification regarding the scope of "as is/as is, where is basis" mentioned in the GST Circulars issued on the basis of recommendation of the GST Council in its meetings.

Ref.: Circular No. 236/30/2024-GST dated 11th October, 2024 issued under Central Goods and Services Tax Act, 2017 by the Tax Research Unit, Department of Revenue, Ministry of Finance, Government of India, New Delhi.

Circular

(No. 29/2024-25-GST)

The Tax Research Unit, Central Board of Indirect Taxes and Customs, Department of Revenue, Ministry of Finance, Government of India, New Delhi has issued the above referred Circular.

For the uniformity in implementation and in exercise of the powers conferred under Section 168 of the Goa Goods and Services Tax Act, 2017 (Goa Act 4 of 2017) it is hereby directed that the Said Circular issued by the Tax Research Unit, Central Board of Indirect Taxes and Customs, Department of Revenue, Ministry of Finance, Government of India shall be applicable, *mutatis mutandis,* in implementation of the Goa Goods and Services Tax Act, 2017 (Goa Act 4 of 2017).

A copy of the above referred circular is attached herewith as Annexure.

Difficulty, if any, in implementation of this circular may please be brought to the notice of the undersigned.

Given under the seal of this office.

S. S. Gill, IAS, Commissioner of State Taxes, Goa

Panaji, 1st November, 2024.

ANNEXURE

Circular No. 236/30/2024-GST

F. No. CBIC-190354/149/2024-TO(TRU-II)-CBEC

Government of India
Ministry of Finance
Department of Revenue
(Tax Research Unit)

North Block, New Delhi, dated the 11th October, 2024

To,

The Principal Chief Commissioners/Principal Directors General,

The Chief Commissioners/Directors General,

The Principal Commissioners/Commissioners of Central Excise & Central Tax.

Subject : Clarification regarding the scope of "as is/ /as is, where is basis"mentioned in the GST Circulars issued on the basis of recommendation of the GST Council in its meetings

Instances were brought to the notice of the Board pertaining to the prevailing doubts among the field formations/trade as regards the scope of regularization on "as is" or "as is, where is basis" vide various GST Circulars issued for clarification regarding applicable GST rates and appropriate classification of specified goods or service or both on the basis of recommendation of the GST Council in its various meetings.

2. The GST Council in its 54th Meeting held on 9th September, 2024 has recommended issuance of clarification to clarify the intent behind the regularization done in the past meetings. Therefore, this Circular is being issued in exercise of power under Section 168 of CGST Act, 2017 to clarify scope of "as is" or "as is, where is basis".

3. Circulars have been issued based on recommendation of the GST Council wherein GST non-payment/short-payments for past period have been regularized "As is" or "As is, where is basis" in certain cases for supply of goods or services or both. Regularization for the past period has been done, on the recommendations of the Council, in situations, such as, where genuine doubts have arisen as there are two competing entries with different rates in the notifications or issues have arisen due to diverse interpretation resulting in a situation where some suppliers have paid a lower rate of GST (including nil rate on account of an exemption entry) and some suppliers have paid a higher rate of GST. It has also been clarified that where tax payers had paid at the higher GST rate, in such situations they shall not be entitled to any refund.

4. The phrase 'as is where is' is generally used in the context of transfer of property and means that the property is being transferred in its current condition, whatever this condition happens to be and the transferee of property has accepted it with all its faults and defects, whether or not immediately apparent. In the context of GST, the phrase 'regularized on as is where is' basis means that the payment made at lower rate or exemption claimed by the taxpayer shall be accepted and no refund shall be made if tax has been paid at the higher rate. The intention of the Council is to regularize payment at a lower rate including nil

rate due to the tax position taken by taxable person, as full discharge of tax liability. The tax position of a taxable person is reflected in the returns filed by the person where the applicable rate of tax (or relevant exemption entry) on a transaction/supply is declared.

5. Thus, in cases where the matters have been regularized on "as is" or "as is, where is basis", in case of two competing rates and the GST is paid at lower of the two rates, or at nil rate where one of the competing rates was nil under notification entry, by some suppliers while other suppliers have paid at higher rate, payment at lower rate shall be treated as tax fully paid for the period that is regularized.

Illustration 1:

In a situation where certain tax payers have paid 5% GST on supply of "X", while some have paid 12% and the GST Council recommends to reduce the rate to 5% prospectively and regularize the past on "as is where is basis" which is notified on 1-12-2023, this means that for the period prior to 1-12-2023, the 5% GST paid by tax payer will be treated as tax fully paid and they would not be required to pay duty differential of 7% between 5% and 12%. For those tax payers who have paid 12% GST, no refund would be allowed.

Illustration 2:

In a situation where certain tax payers have paid 5% GST on supply of "X" while some have paid nil duty due to the genuine doubt that there was an exemption entry for "X", and the GST Council recommends to clarify that the applicable rate is 5% and to regularize the past on "as is where is basis", in view of prevailing genuine doubts, which is notified on 1-12-2023, this means that for the period prior to 1-12-2023, non payment of GST and declaring such transactions as exempted supply in their return by the tax payer will be treated as full discharge of tax liability and they would not be required to pay duty differential of 5 % between Nil and 5 %. For those tax payers who have paid 5%, no refund would be made.

Illustration 3:

In a situation where the interpretational issue is between 5% and 12% rates and some taxpayers have paid 5%, others have paid 12% while certain taxpayers have not paid GST on supply of "X", and the GST Council recommends to clarify that the applicable rate is 12% and regularize the past on "as is where is basis" which is notified on 1-12-2023, this means that for the period prior to 1-12-2023, the 5% GST paid by tax payer will be treated as tax fully paid and they would not be required to pay duty differential between 5% and 12%. For those taxpayers who have paid 12%, no refund would be made. However, the regularization would not apply to situations where no tax has been paid. In such cases, the applicable tax i.e. 12% shall be recovered.

6. Accordingly,suitable instructions shall be passed on to the field formations under your charge.

7. Difficulty, if any, in the implementation of this circular may be brought to the notice of the Board.

Limatula Yaden, Joint Secretary (TRU).

No. CCT/26-4/2024-25/G/3466

Subject: Clarifying the issues regarding implementation of provisions of sub--section (5) and sub-section (6) in Section 16 of CGST Act, 2017–reg.

Ref.: Circular No. 237/31/2024-GST dated 15th October, 2024 issued under Central Goods and Services Tax Act, 2017 by the GST Policy Wing, Central Board of Indirect Taxes and Customs, Department of Revenue, Ministry of Finance, Government of India, New Delhi.

Circular

(No. 30/2024-25-GST)

The GST Policy Wing, Central Board of Indirect Taxes and Customs, Department of Revenue, Ministry of Finance, Government of India, New Delhi has issued the above referred Circular.

For the uniformity in implementation and in exercise of the powers conferred under Section 168 of the Goa Goods and Services Tax Act, 2017 (Goa Act 4 of 2017) it is hereby directed that the Said Circular issued by the GST Policy Wing, Central Board of Indirect Taxes and Customs, Department of Revenue, Ministry of Finance, Government of India shall be applicable, *mutatis mutandis,* in implementation of the Goa Goods and Services Tax Act, 2017 (Goa Act 4 of 2017).

A copy of the above referred circular is attached herewith as Annexure.

Difficulty, if any, in implementation of this circular may please be brought to the notice of the undersigned.

Given under the seal of this office.

S. S. Gill, IAS, Commissioner of State Taxes, Goa.

Panaji, 01st November, 2024.

ANNEXURE

Circular No. 237/31/2024-GST

F. No. CBIC-20001/6/2024-GST
Government of India
Ministry of Finance
Department of Revenue
Central Board of Indirect Taxes and Customs
GST Policy Wing

New Delhi, dated the 15th October, 2024

To,

The Principal Chief Commissioners/Chief Commissioners/Principal Commissioners/Commissioners of Central Tax (All),

The Principal Directors General/Directors General (All).

Madam/Sir,

Subject: Clarifying the issues regarding implementation of provisions of sub-section (5) and sub-section (6) in Section 16 of CGST Act, 2017-reg.

Reference is invited to sub-section (5) and sub-section (6) of Section 16 of the Central Goods & Services Tax Act, 2017 (hereinafter referred to as the "CGST Act") inserted in Section 16 of the CGST Act, with effect from the 1st day of July, 2017, vide Section 118 of the Finance (No. 2) Act, 2024, whereby the time limit to avail input tax credit under provisions of sub-section (4) of Section 16 of CGST Act has been retrospectively extended in certain specified cases.

1.2 Sub-section (4), sub-section (5) and sub-section (6) of Section 16 of the CGST Act are reproduced below for ready reference:

"(4) A registered person shall not be entitled to take input tax credit in respect of any invoice or debit note for supply of goods or services or both after the thirtieth day of November following the end of financial year to which such invoice or debit note pertains or furnishing of the relevant annual return, whichever is earlier.

Provided that the registered person shall be entitled to take input tax credit after the due date of furnishing of the return under Section 39 for the month of September, 2018 till the due date of furnishing of the return under the said section for the month of March, 2019 in respect of any invoice or invoice relating to such debit note for supply of goods or services or both made during the financial year 2017-18, the details of which have been uploaded by the supplier under sub-section (1) of Section 37 till the due date for furnishing the details under sub-section (1) of said Section for the month of March, 2019.

(5) Notwithstanding anything contained in sub-section (4), in respect of an invoice or debit note for supply of goods or services or both pertaining to the Financial Years 2017-18, 2018-19, 2019-20 and 2020-21, the registered person shall be entitled to take input tax credit in any return under Section 39 which is filed upto the thirtieth day of November, 2021.

(6) Where registration of a registered person is cancelled under Section 29 and subsequently the cancellation of registration is revoked by any order, either under Section 30 or pursuant to any order made by the Appellate Authority or the Appellate Tribunal or court and where availment of input tax credit in respect of an invoice or debit note was not restricted under sub-section (4) on the date of order of cancellation of registration, the said person shall be entitled to take the input tax credit in respect of such invoice or debit note for supply of goods or services or both, in a return under Section 39,—

(i) filed upto thirtieth day of November following the financial year to which such invoice or debit note pertains or furnishing of the relevant annual return, whichever is earlier; or

(ii) for the period from the date of cancellation of registration or the effective date of cancellation of registration, as the case may be, till the date of order of revocation of cancellation of registration, where such return is filed within thirty days from the date of order of revocation of cancellation of registration, whichever is later."

1.3 Further, it has been provided in Section 150 of the Finance (No. 2) Act, 2024 (reproduced below), that no refund of any tax paid or the input tax credit reversed shall be granted on account of the said retrospective insertion of sub-section (5) and sub-section (6) of Section 16 of the CGST Act.

"150. No refund shall be made of all the tax paid or the input tax credit reversed, which would not have been so paid, or not reversed, had Section 118 been in force at all material times."

1.4 Besides, vide Notification No. 22/2024-Central tax dated 08-10-2024, a special procedure for rectification of orders has been notified under Section 148 of the CGST Act, to be followed by the class of taxable persons, against whom orders under Section 73 or Section 74 or Section 107 or Section 108 of the CGST Act have been issued confirming demand for wrong availment of input tax credit on account of contravention of provisions of sub-section (4) of Section 16 of the CGST Act, but where such input tax credit is now available as per

the provisions of sub-section (5) or sub-section (6) of Section 16 of the CGST Act, and where appeal against the said order has not been filed.

1.5 Representations have been received from trade and industry requesting for clarification in respect of various issues pertaining to availment of benefit of the said amendments in Section 16 of CGST Act to the taxpayers against whom demands have been issued alleging wrong availment of input tax credit in contravention of provisions of sub--section (4) of Section 16 of CGST Act, who are now entitled to avail the said input tax credit as per the retrospectively inserted provisions of sub-section (5) or sub-section (6) of Section 16 of the CGST Act.

2. In order to ensure uniformity in the implementation of the provisions of law across the field formations, the Board, in exercise of its powers conferred by Section 168 (1) of the CGST Act, hereby clarifies the issues as below.

3. The following action may be taken by the tax authorities and/or the taxpayers in various scenarios for availment of benefit on account of retrospectively inserted provisions of sub-section (5) or sub-section (6) of Section 16 of the CGST Act:

3.1 Where no demand notice/statement has been issued under Section 73 or Section 74 of the CGST Act:

In cases, where any investigation/proceedings in respect of wrong availment of input tax credit alleging contravention of provisions of sub-section (4) of Section 16 of the CGST Act has been initiated, but no demand notice/statement under Section 73 or Section 74 of the said Act has been issued, and taxpayers are now entitled to avail the said input tax credit under the provisions of sub-section (5) or sub-section (6) of Section 16 of the CGST Act, the proper office shall take cognizance of the sub-section (5) or sub-section (6) of Section 16 of CGST Act, inserted retrospectively with effect from 01-07-2017 and take further appropriate action. This also includes the cases where an intimation in FORM DRC-01A has been issued under Rule 142(1A) of the CGST Rules for denial of input tax credit on account of contravention of sub-section (4) of Section 16 of the said Act, but no demand notice/ /statement under Section 73 or Section 74 of the said Act has been issued.

3.2 Where demand notice/statement under Section 73 or Section 74 of CGST Act has been issued but no order under Section 73 or Section 74 of CGST Act has been issued by the Adjudicating Authority:

In such cases, the Adjudicating Authority shall take cognizance of sub-section (5) or sub-section (6) of Section 16 of the CGST Act, inserted retrospectively with effect from 01-07-2017, and pass appropriate order under Section 73 or Section 74 of the CGST Act.

3.3 Where order under Section 73 or Section 74 of the CGST Act has been issued and appeal has been filed under Section 107 of the CGST Act with the Appellate Authority but no order under Section 107 of the CGST Act has been issued by the Appellate Authority:

In such cases, the Appellate Authority shall take cognizance of sub-section (5) or sub-section (6) of Section 16 of the CGST Act, inserted retrospectively with effect from 01-07-2017, and pass appropriate order under Section 107 of the CGST Act.

3.4 Where order under Section 73 or Section 74 of the CGST Act has been issued and Revisional Authority has initiated proceedings under Section 108 of the CGST Act, but no order under Section 108 of the CGST Act has been issued by the Revisional Authority:

In such cases, the Revisional Authority shall take cognizance of sub-section (5) or sub-section (6) of Section 16 of the CGST Act, inserted retrospectively with effect from 01-07-2017, and pass appropriate order under Section 108 of the CGST Act.

3.5 Where order under Section 73 or Section 74 of the CGST Act has been issued but no appeal against the said order has been filed with the Appellate Authority, or where the order under Section 107 or Section 108 of the CGST Act has been issued by the Appellate Authority or the Revisional Authority but no appeal against the said order has been filed with the Appellate Tribunal:

In such cases, where any order under Section 73 or Section 74 or Section 107 or Section 108 of the CGST Act has been issued confirming demand for wrong availment of input tax credit on account of contravention of provisions of sub-section (4) of Section 16 of the CGST Act, but where such input tax credit is now available as per the provisions of sub-section (5) or sub-section (6) of Section 16 of the CGST Act, and where appeal against the said order has not been filed, the concerned taxpayer may apply for rectification of such order under the special procedure under Section 148 of the CGST Act notified vide Notification No. 22/2024-Central tax dated 08-10-2024, within a period of six months from the date of issuance of the said notification.

3.5.1 The taxpayers can file an application for rectification electronically, after login to www.gst.gov.in, using their credentials, by navigating as below in various cases:

a. In case where an application for rectification of an order issued under Section 73 or Section 74 of the CGST Act is to be filed:

i. Click Dashboard>Services>User Services>My Applications.

ii. Select "Application for rectification of order" in the Application Type field. Then, click the NEW APPLICATION button.

b. In case where an application for rectification of an order issued under Section 107 of the CGST Act is to be filed:

i. Click Dashboard>Services>User Services> View Additional Notices/Orders.

ii. Additional Notices and Orders page is displayed. Click the View hyperlink to go to the Case Details screen of the issued Notice/Order.

iii. Case Details page is displayed. The APPLICATIONS tab is selected by default. Select the ORDERS tab and click the "Initiate Rectification" link.

c. In case where an application for rectification of an order issued under Section 108 of the CGST Act is to be filed:

i. Click Dashboard>Services > User Services > View Additional Notices/Orders.

ii. Additional Notices and Orders page is displayed. Click the View hyperlink to go to the Case Details screen of the issued Notice/Order.

iii. Case Details page is displayed. The NOTICES tab is selected by default. To submit Rectification Request against the Revision Order issued to you by the Revisional Authority, select the ORDERS tab and click the "Initiate Rectification" link.

3.5.2 While filing such application for rectification of order, the taxpayer shall upload along with the application for rectification of order, the information in the proforma in Annexure A of the said notification, containing inter-alia the details of the demand confirmed in the said order of the input tax credit wrongly availed on account of contravention of sub-section (4) of Section 16 of the CGST Act, which is now eligible as per sub--section (5) and/or sub-section (6) of Section 16 of the CGST Act.

3.5.3 Such application for rectification shall be dealt by the proper officer who had passed the order for which the said rectification application has been filed. The said officer shall take a decision on the said application for rectification and issue the order, as far as possible, within a period of three months from the date of such application. Besides, in case where any rectification is being made by the proper officer in the order for which the rectification application has been filed, he shall also upload a summary of the rectified order electronically in FORM DRC-08 in cases where rectification of an order issued under Section 73 or Section 74 of the CGST Act is being made, and in FORM GST APL-04, in cases where rectification of an order issued under Section 107 or Section 108 of the said Act is being made. While taking a decision on such application for rectification filed under the said special procedure, the proper officer shall also consider other grounds, if any, for denial of input tax credit, other than contravention of sub-section (4) of Section 16 of the CGST Act, invoked in the concerned notice issued under Section 73 or Section 74, as applicable, in respect of the said amount of input tax credit.

3.5.4 Where the rectification adversely affects the said person, the principles of natural justice shall be followed by the said proper officer.

3.5.5 Further, it is to be noted that in cases where any rectification has been made by the proper officer in the order for which the rectification application has been filed, an appeal against such rectified order can be filed under the provisions of Section 107 or Section 112 of the CGST Act, as the case may be, within the time limit specified therein.

4. It is pertinent to note that in terms of Section 150 of the Finance (No. 2) Act, 2024, no refund of tax already paid or input tax credit already reversed would be available, where such tax has been paid or input tax credit has been reversed on account of contravention of provisions of sub-section (4) of Section 16 of the CGST Act, and where such input tax credit is now available as per the provisions of sub-section (5) or sub-section (6) of Section 16 of the CGST Act.

5. It is to be noted that the rectification application of an order issued under Section 73 or Section 74 or Section 107 or Section 108 of the CGST Act, can be filed under the special procedure notified vide notification No. 22/2024-Central tax dated 08-10-2024, within a period of six months from the date of issuance of the said notification, only in cases where the issue or one of the issues

on which the demand has been confirmed in the said order, pertains to wrong availment of input tax credit on account of contravention of provisions of sub-section (4) of Section 16 of the CGST Act, and where such input tax credit is now available as per the provisions of sub-section (5) or sub-section (6) of Section 16 of the CGST Act. In cases where no such issue is involved and a taxpayer requires to file an application of rectification of an order, such rectification application can be filed by the taxpayers only under the provisions of Section 161 of the CGST Act, within the time limit specified therein. In case a taxpayer has filed an application for rectification of an order under the special procedure notified vide notification No. 22/2024--Central tax dated 08-10-2024, but where it is found that the issues in the said order do not involve any issue of wrong availment of input tax credit on account of contravention of provisions of sub-section (4) of Section 16 of the CGST Act, and where such input tax credit is now available as per the provisions of sub-section (5) or sub-section (6) of Section 16 of the CGST Act, such an application would be summarily rejected by the proper officer with a remark that, "*The rectification application is rejected as it is found that the same is not covered under the notification No. 22/2024-Central tax dated 08-10-2024, as no such issue is involved in the said order pertaining to wrong availment of input tax credit on account of contravention of provisions of sub-section (4) of Section 16 of the CGST Act, and where such input tax credit is now available as per the provisions of sub-section (5) or sub-section (6) of Section 16 of the CGST Act*".

6. It is requested that suitable trade notices may be issued to publicize the contents of this Circular.

7. Difficulty, if any, in the implementation of this Circular may be brought to the notice of the Board. Hindi version would follow.

Sanjay Mangal, Principal Commissioner (GST).

No. CCT/26-4/2024-25/G/3467

Subject: Clarification of various doubts related to Section 128A of the CGST Act, 2017.

Ref.: Circular No. 238/32/2024-GST dated 15th October, 2024 issued under Central Goods and Services Tax Act, 2017 by the GST Policy Wing, Central Board of Indirect Taxes and Customs, Department of Revenue, Ministry of Finance, Government of India, New Delhi.

Circular

(No. 31/2024-25-GST)

The GST Policy Wing, Central Board of Indirect Taxes and Customs, Department of Revenue, Ministry of Finance, Government of India, New Delhi has issued the above referred Circular.

For the uniformity in implementation and in exercise of the powers conferred under Section 168 of the Goa Goods and Services Tax Act, 2017 (Goa Act 4 of 2017) it is hereby directed that the Said Circular issued by the GST Policy Wing, Central Board of Indirect Taxes and Customs, Department of Revenue, Ministry of Finance, Government of India shall be applicable, *mutatis mutandis*, in implementation of the Goa Goods and Services Tax Act, 2017 (Goa Act 4 of 2017).

A copy of the above referred circular is attached herewith as Annexure.

Difficulty, if any, in implementation of this circular may please be brought to the notice of the undersigned.

Given under the seal of this office.

S. S. Gill, IAS, Commissioner of State Taxes, Goa.

Panaji, 01st November, 2024.

ANNEXURE

Circular No. 238/32/2024-GST

F. No. CBIC-20001/6/2024-GST
Government of India
Ministry of Finance
Department of Revenue
Central Board of Indirect Taxes and Customs
GST Policy Wing
New Delhi, dated the 15th October, 2024

To,

The Pr. Chief Commissioners/Chief Commissioners/ Principal, Commissioners/Commissioners of Central Tax (All),

The Principal Directors General/Directors General (All).

Madam/Sir,

Subject: Clarification of various doubts related to Section 128A of the CGST Act, 2017.

Based on the recommendations of the GST Council made in its 53rd meeting, Section 128A has been inserted in the Central Goods and Services Tax Act, 2017 (hereinafter referred to as 'the CGST Act') with effect from 01-11-2024 to provide for waiver of interest or penalty or both, relating to demands under Section 73 of the CGST Act

pertaining to Financial Years 2017-18, 2018-19 and 2019-20, subject to certain conditions.

1.2 Subsequently, based on the recommendations of the GST Council made in its 54th meeting, Rule 164 has been inserted in Central Goods and Services Tax Rules, 2017 (hereinafter referred to as 'the CGST Rules') with effect from 01-11-2024 vide notification No. 20/2024-Central tax dated 8th October, 2024, providing for procedure and conditions for closure of proceedings under Section 128A of CGST Act.

1.3 Further, vide notification No. 21/2024--Central tax dated 8th October, 2024, 31-03-2025 has been notified under sub-section (1) of Section 128A of CGST Act as the date on or before which the full payment of tax demanded in the notice/statement/ /order needs to be made by the taxpayer in order to avail the benefit of waiver of interest or penalty or both under the said Section. Also, for cases where the application is made as per the first proviso to the sub-section (1) of the Section 128A of CGST Act, the date on or before which the full payment of tax demanded in the order issued by the proper officer redetermining the tax under Section 73 of CSGT Act needs to be made by the taxpayer, has been notified as six months from the date of issuance of such order by the proper officer redetermining the tax under Section 73 of CGST Act.

2.1 Various doubts have been raised by the trade and the field formations in respect of implementation of provisions of Section 128A of the CGST Act, relating to waiver of interest or penalty or both in respect of demands under Section 73 of the CGST Act pertaining to Financial Years 2017-18, 2018-19 and 2019-20.

2.2 In order to clarify the issue and to ensure uniformity in the implementation of the provisions of the law across field formations, the Board, in exercise of its powers conferred by Section 168(1) of the CGST Act, hereby issues the following clarifications and guidelines.

2.3 Unless otherwise specified, all the sections mentioned in this circular refer to sections of the CGST Act and all the rules mentioned herein refer to the rules of CGST Rules.

3. The procedure to be followed by the taxpayers and the tax officers to avail and implement the benefit provided under Section 128A, is as follows:

3.1 Filing of application:

3.1.1 Section 128A provides for "Waiver of interest or penalty or both relating to demands raised under Section 73, for certain tax periods". Therefore, provisions of Section 128A are applicable in cases where notices/statements have been issued under Section 73, for the FYs 2017-18, 2018-19 and 2019-20, in the following situations:

(a) Where a notice issued under sub-section (1) of Section 73 or a statement issued under sub--section (3) of Section 73, but where no order under sub-section (9) of Section 73 has been issued;

(b) Where an order has been issued under sub--section (9) of Section 73, in respect of the notice/ /statement issued under Section 73, but where no order has been issued by the Appellate Authority/Revisional Authority under sub--section (11) of Section 107 or sub-section (1) of Section 108;

(c) Where an order has been issued by the Appellate Authority/Revisional Authority under sub-section (11) of Section 107 or sub-section (1) of Section 108, in the cases where notice/ /statement was issued under Section 73 and where no order under sub-section (1) of Section 113 has been passed by the Appellate Tribunal;

3.1.2 Additionally, as per the first proviso to sub--section (1) of Section 128A, in cases where a notice was initially issued under Section 74 for FYs 2017-18, 2018-19 and 2019-20, and an order is passed or required to be passed by the proper officer under Section 73 [in pursuance of the direction of the Appellate Authority or Appellate Tribunal or a court in accordance with the provisions of sub-section (2) of Section 75], those cases are also covered under Section 128A for the purpose of waiver of interest or penalty or both.

3.1.3 In cases referred to in Clause (a) of sub--section (1) of Section 128A where a notice/ /statement under Section 73 has been issued demanding tax *interalia* pertaining to the period from July 2017 to March 2020, for which no order has been issued under Section 73, an application in FORM GST SPL-01, may be filed electronically on the common portal, by the taxpayer.

3.1.4 In cases referred to in Clause (b) of sub--section (1) of Section 128A, where an order has been issued under Section 73 demanding tax *inter alia* pertaining to the period from July 2017 to March 2020, for which no order has been issued under Section 107 or Section 108, an application in FORM GST SPL-02, may be filed electronically on the common portal, by the taxpayer. Similarly, in cases referred to in Clause (c) of sub-section (1) of Section 128A, where an order has been issued under Section 107 or Section 108, but no order has been issued under section 113, an application in FORM GST SPL-02, may be filed electronically on the common portal, by the taxpayer.

3.1.5 The application in FORM GST SPL-01 or FORM GST SPL-02, as the case may be, shall be

filed within a period of three months from the date notified under Section 128A (1), i.e., within three months from 31-03-2025. However, as per the first proviso to sub-section (1) of Section 128A, where a notice has been issued under Section 74, and the Appellate Authority or Appellate Tribunal or a court directs the proper officer to redetermine the tax as if the demand notice is issued under Section 73, in accordance with the provisions of Section 75(2), then same is covered under Clause (b) of sub-section (1). Therefore, as mentioned in proviso to sub-rule (6) of Rule 164, in such cases, an application in FORM GST SPL-02, can be filed within six months from the date of communication of order of the proper officer redetermining the amount of tax to be paid under Section 73.

3.1.6 Where an appeal under Section 107 or Section 112 has been filed by the taxpayer, against an order referred to in Clause (b) or Clause (c) of sub-section (1) of Section 128A, or where a writ petition has been filed by the taxpayer against a notice/statement/order referred to in Clause (a) or (b) or Clause (c) of sub-section (1) of Section 128A, the taxpayer is required to withdraw the same before filing an application for waiver of interest or penalty or both, and enclose the order of withdrawal of such appeal/writ petition in along with the application filed in FORM GST SPL-01 or FORM GST SPL-02, as the case may be. However, in cases where the applicant has filed the application or any other document, for withdrawal of an appeal or writ petition before Appellate Authority or Appellate Tribunal or a court, as the case may be, but the order for withdrawal has not been issued by the concerned authority till the date of filing of the application in FORM GST SPL-01 or FORM GST SPL-02, he is required to upload the copy of such application or the document filed for withdrawal of the said appeal or writ petition along with the said application in FORM GST SPL-01 or FORM GST SPL-02. It is to be mentioned that he is required to upload the final order for withdrawal of the said appeal or writ petition on the common portal, within one month of the issuance of the said order for withdrawal by the concerned authority.

3.1.7 It may be noted that, in case the taxpayer has been issued multiple notices/statements/orders pertaining to demands under Section 73, for period from July, 2017 to March, 2020, he is required to file a separate application in FORM GST SPL-01 or FORM GST SPL-02, as the case may be, in respect of each of the concerned notice/statement/order.

3.2 Payment of tax:

3.2.1 With respect to a notice or statement referred to in Clause (a) of sub-section (1) of Section 128A, i.e., a notice or statement that is yet to be adjudicated, the payment towards the tax demanded in the said notice shall be made by the taxpayer through FORM GST DRC-03.

3.2.2 With respect to an order referred to in Clause (b) and Clause (c) of sub-section (1) of Section 128A, the payment towards such tax demanded shall be made by the taxpayer, only by the making the payment against the debit entry created in the Part II of the Electronic Liability Register (ELR) by the demand order. In this regard, the procedure mentioned in para 4 of Circular No. 224/18/2024--GST dated 11th July, 2024 may be referred to. However, in cases where the payment towards tax demanded in the demand order has already been made through FORM GST DRC-03, the procedure prescribed in Rule 142(2B) may be followed. In such cases, the taxpayer shall be required to file an application in FORM GST DRC-03A as prescribed in the said rule, in order to adjust the amount already paid vide the FORM GST DRC-03, towards the demand created in the ELR-Part II, before filing the application for waiver under Section 128A in FORM GST SPL-02. For the purposes of determining the date of payment of full amount of tax, the date on which the amount has been paid through FORM GST DRC-03 may be considered and not the date on which the said amount has been adjusted using FORM GST DRC-03A.

3.2.3 Such payment shall be made on or before the date notified under Section 128A (1), i.e., on or before 31-03-2025. Where applications are filed in respect of cases referred to in the first proviso to sub-section (1) of Section 128A, then the applicants shall be required to make the payment on or before the date notified under Section 128A (1) specifically for those cases, i.e., within six months of the communication of the order of the proper officer redetermining the amount of tax to be paid under Section 73.

3.2.4 In cases where the amount of tax payable as per the notice/statement/order includes the amount that was demanded due to contravention of provisions of sub-section (4) of Section 16, which is however not payable anymore due to the retrospective insertion of sub-section (5) and sub--section (6) to Section 16, the full amount of tax payable as per the notice/statement/order as mentioned in sub-section (1) of Section 128A for eligibility of waiver of interest or penalty or both shall be calculated after deducting the amount, which is not payable anymore as per sub-sections (5) or sub-section (6) of Section 16, as per sub-rule (5) of Rule 164. In this regard, it is also to be mentioned that, where the taxpayer is deducting the amount of input tax credit which was denied on account of contravention of sub-section (4) of Section 16, but

which is now available as per retrospectively inserted provisions of sub-section (5) or sub-section (6) of Section 16 of the CGST Act, he is not required to file an application for rectification for the same in terms of the special procedure notified under Section 148 vide notification No. 22/2024-Central tax dated 8th October, 2024.

3.2.5 It is also clarified that while calculating the amount deductible on account of not being payable in accordance with sub-section (5) or sub-section (6) of Section 16, from the amount payable in terms of the notice or statement or order under Section 73, as the case may be, taxpayer is required to ensure that such amount is deducted only where ITC has been denied solely on account of contravention of Section 16(4) of the CGST Act and not on any other grounds. The tax officer scrutinising such applications is also required to verify that the said amount that has been deducted by the taxpayer as not payable anymore on account of retrospective insertion of sub-section (5) and sub-section (6) to Section 16, was initially denied solely deducted on the basis of contravention of sub-section (4) of Section 16, and not on any other grounds.

3.2.6 It is further mentioned that, in cases referred to in sub-rule (3) and sub-rule (4) of Rule 164, the applicant can file the application for waiver of interest or penalty or both under Section 128A, in respect of a notice/statement/order mentioned in sub-section (1) of Section 128A, only after payment of full amount of tax demanded in the said notice/ /statement/order, including on account of demand pertaining to erroneous refund, if any, and also on account of demand pertaining to the period other than the period mentioned in sub-section (1) of Section 128A, if any, in the said notice/statement/order.

3.3 Processing of application and issuance of order:

3.3.1 The proper officer for processing the application for waiver of interest or penalty or both under Section 128A, would be the proper officer to issue the order under Section 73, in case the application is filed in FORM GST SPL-01, and would be the proper officer for recovery under Section 79, in case the application is filed in FORM GST SPL-02.

3.3.2 The proper officer on receipt of the application in FORM GST SPL-01 or FORM GST SPL-02, shall examine the said application. If, on examination, he finds that the said application is liable to be rejected, he shall issue a notice to the applicant, within three months from the date of receipt of the said application, in FORM GST SPL-03 on the common portal. The proper officer shall also give the applicant an opportunity of personal hearing.

3.3.3 On receipt of the notice in FORM GST SPL-03, the applicant may file his reply in FORM GST SPL-04, electronically on the common portal, within a period of one month from the date of receipt of the notice.

3.3.4 The proper officer shall issue an order in FORM GST SPL-05, accepting the said application, if he is satisfied that the applicant is eligible for waiver of interest or penalty or both under Section 128A. However, if the proper officer, based on the application and the reply in FORM GST SPL-04 received from the taxpayer, is of the view that the applicant is not eligible for waiver of interest or penalty or both under Section 128A, he shall issue an order in FORM GST SPL-07, rejecting the said application.

3.3.5 The order in FORM GST SPL-05 or FORM GST SPL-07 shall be required to be issued within the time period prescribed in sub-rule (13) of Rule 164. In terms of sub-rule (14) of rule 164, in cases where no order is issued within the time limit prescribed in sub-rule (13) of Rule 164, the application filed in FORM GST SPL-01 or FORM GST SPL-02, as the case may be, shall be deemed to be approved, and the order in FORM GST SPL-05 approving the said application shall be made available on the common portal.

3.3.6 In cases where an application for waiver of interest or penalty or both was filed in FORM GST SPL-01 and an order approving the said application is issued by the proper officer in FORM GST SPL-05, then a summary of order in FORM GST DRC-07 need not be issued on the common portal. However, in cases where an order in FORM GST SPL-05 or in FORM GST SPL-06, as the case may be, has been issued approving an application filed in FORM GST SPL-02, the liability earlier created in the ELR–Part II by the demand order or the appellate order, as the case may be, shall stand modified accordingly.

3.3.7 It is also to be mentioned that as per the second proviso to sub-section (1) of Section 128A, the conclusion of proceedings against a demand notice/statement/order under this section and further issuance of such conclusion order in FORM GST SPL-05 or in FORM GST SPL-06, as the case may be, in cases where the department had filed an application/initiated revisional proceedings against the said demand notice/statement/order, is conditional upon the payment of additional tax payable, if any, as determined by the Appellate Authority or the Appellate Tribunal or the court or the Revisional Authority, as the case may be, within three months of issuance of such order. In case, such additional tax is not paid within the specified time limit, then as per sub-rule (16) of Rule 164, the waiver of interest or penalty or both provided under Section 128A as per the order issued in FORM GST SPL-05 or FORM GST SPL-06, as the case may be, shall become void.

3.3.8 Further, while processing the said application, the proper officer shall ensure that the applicant has paid the amount of tax demanded in the notice/statement/order referred in sub-section (1) of Section 128A [other than the amount not payable anymore due to the retrospective insertion of sub--section (5) and sub-section (6) to Section 16, as referred in para 3.2.4], including the amount of tax demand pertaining to erroneous refund, if any, and also on account of demand pertaining to the period other than the period mentioned in sub-section (1) of Section 128A, if any, in the said notice/statement/ /order. Further, the proper officer shall also keep in consideration that waiver of interest and penalty under Section 128A is available only in respect of demand pertaining to the period mentioned in sub--section (1) of Section 128A, and the demand on issues other than on account of erroneous refund.

3.3.9 Where it is found that any amount of interest and penalty is payable by the applicant on account of some demand pertaining to the period other than the period mentioned in sub-section (1) of Section 128A or pertaining to demand of erroneous refund, the detail of the same shall be mentioned in column No. 19 and column No. 20 of FORM GST SPL-05 or FORM GST SPL-06, as the case may be. Further, in such cases, an opportunity of personal hearing may be granted to the applicant, before issuance of order in FORM GST SPL-05 or FORM GST SPL-06.

3.3.10 In cases referred in para 3.3.9, the applicant is required to pay the amount of interest or penalty or both, detailed in column No. 19 and column No. 20 of FORM GST SPL-05 or FORM GST SPL-06, within a period of three months from the date of issuance of the said order in FORM GST SPL-05 or FORM GST SPL-06, as the case may be. In case where the said amount is not paid within the period of three months from the date of issuance of the said order in FORM GST SPL-05 or FORM GST SPL-06, as the case may be, the waiver of interest or penalty or both under Section 128A as per the order issued in FORM GST SPL-05 or FORM GST SPL-06, shall become void, as per sub-rule (17) of Rule 164.

3.4 Appeal against the orders issued under Rule 164:

3.4.1 No appeal shall lie under Section 107, against an order issued in FORM GST SPL-05 concluding the proceedings under Section 128A. The order issued in FORM GST SPL-07, rejecting the application for waiver, shall be, however, appealable in accordance with sub-section (1) of Section 107 within the time limit specified therein, by filing an application in FORM GST APL-01. In such cases, normally, no pre-deposit may be required to be paid by the taxpayer for filing the said appeal, as the said amount may already have been paid as a part of payment of tax dues involved in the demand notice/statement/order before filing an application in FORM GST SPL-01 or FORM GST SPL-02. However, in cases where no amount of tax dues has been paid or amount of tax dues paid is less than the requisite amount for pre-deposit for filing appeal as per sub-section (6) of Section 107, the remaining amount of pre-deposit will be required to be paid for filing the said appeal.

3.4.2 It is also important to note that the subject matter of the appeal will only be regarding the applicability of waiver of interest or penalty or both under Section 128A and not on the merits of the original notice/statement/order.

3.4.3 It is to be mentioned that, in cases where an appeal has been filed by the applicant against the order in FORM GST SPL-07, and the appellate authority holds that the proper officer has wrongly rejected the application, thereby allowing the applicant the benefit of the waiver of interest or penalty or both, the said appellate authority shall pass an order in FORM GST SPL-06. This form shall accordingly modify the liability created, if any, in the ELR-Part II.

3.4.4 Where appeal had been withdrawn before filing an application in FORM GST SPL-02, for availing the waiver of interest or penalty or both under Section 128A, but the application for waiver is rejected by the proper officer by issuance of order in FORM GST SPL-07,

(a) in cases,where the taxpayer prefers an appeal against the said rejection order, and the appellate authority holds that the proper officer has righty rejected the said application made in FORM GST SPL-02, and issues an order in FORM GST APL-04, then the original appeal filed by the applicant shall be restored, subject to condition that the applicant files an undertaking electronically on the portal in FORM GST SPL-08, that he has neither filed nor intends to file any appeal against such order of the Appellate Authority.

(b) in cases, where the taxpayer prefers an appeal against the said rejection order, and the appellate authority holds that the proper officer has wrongly rejected the said application made in FORM GST SPL-02, and issues an order in FORM GST SPL-06, thereby holding that the appellant is eligible for waiver of interest or penalty or both, no appeal shall lie against the said order issued in FORM GST SPL-06.

(c) in case, where the taxpayer does not prefer an appeal within the time period mentioned in sub--section (1) of Section 107 against the said rejection order, then the original appeal filed by the applicant shall be restored.

4. Further the following issues with respect to availing the benefits of waiver of interest or penalty or both provided under Section 128A, are also clarified hereby:

S. No.	Issue	Clarification
1	2	3
1	Whether the benefit provided under Section 128A will be applicable to taxpayers who have paid the tax component in full before the date on which the said Section has come into effect?	In this regard, it is to be mentioned that all such amount paid towards the said demand upto the date notified under sub-section (1) of Section 128A, irrespective of whether the said payment has been done before Section 128A comes into effect, or after that, and irrespective of whether such payment was made before the issuance of the demand notice or demand order, or after that, shall be considered as paid towards the amount payable in sub-section (1) of Section 128A, as long as the said amount has been paid upto the date notified under sub-section (1) of Section 128A and was intended to be paid towards the said demand.
2	Whether amount recovered by the tax officers as tax due from any other person on behalf of the taxpayer, against a particular demand can be considered as tax paid towards the same for the purpose of Section 128A?	Yes. The said amount recovered by the tax officers as tax due from any other person on behalf of the taxpayer against a demand, shall also be considered as the tax paid towards the said demand, for the purpose of Section 128A provided the same has been recovered on or before the date notified under sub-section (1) of Section 128A.
3	Whether the amount recovered by the tax officers as interest or penalty or both, pertaining to demand under Section 73 pertaining to Financial Years 2017-18, 2018-19 and 2019-20, can be adjusted against the tax amount payable towards the demand made under Section 73 pertaining to the said financial years?	No. It is mentioned that as per the third proviso to sub-section (1) of Section 128A, no refund of such amount of interest or penalty or both, is available. Accordingly, any amount paid by the taxpayer or recovered by the tax officers, as interest or penalty cannot be adjusted towards the amount payable as tax.
4	Whether the benefit provided under Section 128A will be applicable in cases, where the tax due has already been paid and the notice or demand orders under Section 73 only pertains to interest and/or penalty involved?	Where the tax due has already been paid and the notice or demand orders under Section 73 only pertains to interest and/or penalty involved, the same shall be considered for availing the benefit of Section 128A. However, the benefit of waiver of interest and penalty shall not be applicable in the cases where the interest has been demanded on account of delayed filing of returns, or delayed reporting of any supply in the return, as such interest is related to demand of interest on self-assessed liability and does not pertain to any demand of tax dues and is directly recoverable under sub-section (12) of Section 75.
5	Whether the benefit under Section 128A is available, if the taxpayer intends to avail partial waiver of interest or penalty or both, on certain issues, by making part payment of the amount demanded in the notice/statement/order, as the case may be, and opts to litigate for the remaining issues?	No. Section 128A (1) clearly provides that the waiver of interest or penalty or both is only applicable when the full amount of tax demanded in the notice/statement/order is paid.

1	2	3
6	Where the notice/order involves multiple periods, ranging from the period for which waiver provided in Section 128A is applicable, and includes some other tax periods for which such waiver is not applicable, whether the benefit of waiver of interest or penalty or both under Section 128A can be availed for the period covered under Section 128A? If so, what is the tax amount payable for claiming waiver under Section 128A?	The taxpayer is eligible to apply for waiver of interest or penalty or both, in such cases where the demand notice/ order spans tax periods covered under Section 128A and those not covered under the said Section. However, as per sub-rule (4) of Rule 164, the taxpayer shall be required to pay the full amount of tax demanded in the notice/statement/order, as the case may be, to avail the benefit of waiver of interest or penalty or both under Section 128A. Further, though the amount of tax demanded shall be required to be paid as per the notice/statement/order, as the case may be, for whole of the period covered under the said notice/statement/order, but the waiver of interest or penalty or both under Section 128A shall only be applicable for the period specified in Section 128A, and not for the period not covered under the said Section. On payment of the full amount demanded in the notice/ /statement/order, if the proper officer finds that the applicant is eligible for waiver of interest or penalty or both for tax periods covered under Section 128A, he will reduce the liability to that extent in his order in FORM GST SPL-05, and the remaining liability of interest or penalty or both for tax periods not covered under Section 128A, remains payable by the taxpayer. The said amount shall be required to be paid by the applicant within three months from the date of issuance of order in FORM GST SPL-05 or FORM GST SPL-06, as the case may be. If the said amount is not paid within the time limit as mentioned above, the order in FORM GST SPL-05 or FORM GST SPL-06, as the case may be, the waiver of interest or penalty or both under Section 128A as per the order issued in FORM GST SPL-05 or FORM GST SPL-06, shall become void, as per sub-rule (17) of Rule 164.
7	Where the notice/statement/order issued under Section 73 involves multiple issues and one of them is regarding demand of erroneous refund, whether an application can be filed for waiver of interest or penalty or both under Section 128A? If so, what is the tax amount payable for claiming waiver under Section 128A?	Yes. However, as per sub-rule (3) of Rule 164, the taxpayer shall be required to pay the full amount of tax demanded in the notice/statement/order, as the case may be, including on account of demand of erroneous refund, to avail the benefit of waiver of interest or penalty or both under Section 128A. Further, in such cases, the waiver of interest or penalty or both under Section 128A shall only be available in respect of tax demand other than that pertaining to demand of erroneous refund. On payment of the full amount demanded in the notice/ /statement/order, if the proper officer finds that the applicant is eligible for waiver of interest or penalty or both for tax periods covered under Section 128A in respect of tax demand other than that pertaining to demand of erroneous refund, he will reduce the liability to that extent in his order in FORM GST SPL-05, and the remaining liability of interest or penalty or both, that corresponds to demand of erroneous refund, remains payable by the applicant.

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		The said amount shall be required to be paid by the applicant within three months from the date of issuance of order in FORM GST SPL-05 or FORM GST SPL-06, as the case may be. If the said amount is not paid within the time limit as mentioned above, the order in FORM GST SPL-05 or FORM GST SPL-06, as the case may be, the waiver of interest or penalty or both under Section 128A as per the order issued in FORM GST SPL-05 or FORM GST SPL-06, shall become void, as per sub-rule (17) of Rule 164.
8	In cases where department has filed an appeal against the order mentioned in Clause (b) or Clause (c) of sub-section (1) of Section 128A and the Appellate Authority or the Appellate Tribunal or the Court or the Revisional Authority, has issued an order enhancing the tax liability, and in the meanwhile the proper officer has issued an order in FORM GST SPL-05 under Section 128A, and the taxpayer has not paid the said additional amount of tax liability within the specified time limit, what will be the status of the conclusion of proceedings under Section 128A?	Yes, as per the second proviso to Section 128A, the conclusion of proceedings in such cases is subject to the condition that the said person pays the additional amount of tax payable, if any, in accordance with the order of the Appellate Authority or the Appellate Tribunal or the Court or the Revisional Authority, as the case may be, within three months from the date of the said order. Accordingly, it becomes clear that even in cases where an order in FORM GST SPL-05 or in FORM GST SPL-06 has been issued the conclusion of the said proceedings will be subject to the condition that the taxpayer pays the additional tax amount as determined by the Appellate Authority or the Appellate Tribunal or the court or the Revisional Authority by an order issued in the matter of appeal filed by the department, within a period of three months from the date of the such order enhancing the tax liability. In case such additional payment is not done within a period of three months from the date of the said order, then as per sub-rule (16) of Rule 164, the waiver of interest or penalty or both under Section 128A as per the order issued in FORM GST SPL-05 shall become void.
9	Sub-section (3) of Section 128A refers to only appeal or writ petition. In this regard, whether matters where SLP filed by the applicant is pending before the Supreme Court, what is the procedure to be followed by the taxpayer to avail the waiver of interest or penalty or both?	Yes, in such cases also the applicant will be required to withdraw the said special leave petition and file an application in FORM GST SPL-01 or FORM GST SPL-02, as the case may be, along with proof of withdrawal of SLP or the copy of the application or any other document filed for withdrawal of SLP, where the order for withdrawal of SLP has not been issued at the time of filing application in FORM GST SPL-01 or FORM GST SPL-02. In such cases, the procedure mentioned in para 3.1.6 may be followed.
10	Whether the benefit provided under Section 128A will be available for matters involving IGST and Compensation Cess?	Yes. On joint reading of Section 20 of the Integrated Goods and Services Tax Act, 2017 and Section 11 of GST (Compensation to States) Act, 2017 along with Section 128A of CGST Act, it becomes clear that the benefit provided under Section 128A of CGST Act will be available for matters involving IGST and compensation cess as well. In this regard, it is mentioned that in such cases, full payment of tax means payment of CGST, SGST, IGST and compensation cess demanded in the notice/statement/ /order, as the case may be.

1	2	3
11	Whether Section 128A covers cases involving demand of irregularly availed transition credit?	The transitional credit is considered to be availed on the date on which the said credit amount is credited in the Electronic Credit Ledger. On reading Rule 121 read with sub-rule (2) of Rule 117, it is clear that any demand in respect of transitional credit wrongly availed, whether wholly or partly can be made under Section 73 or, as the case may be, Section 74. Therefore, it is mentioned that if the amount of transitional credit has been availed in the period covered under Section 128A and notice for demand of wrongly availed credit is issued under Section 73, the same is covered under Section 128A.
12	Whether Section 128A will cover waiver of penalties under other provisions, late fee, redemption fine etc.?	It is clarified that any penalty, including penalties under Section 73, Section 122, Section 125 etc., demanded under the demand notice/statement/order issued under Section 73, is covered under the waiver provided under Section 128A. However, late fee, redemption fine etc. are not covered under the waiver provided under Section 128A.
13	Whether payment to avail waiver under Section 128A can be made by utilizing ITC?	Yes. The payment of tax required to be made for eligibility for waiver under Section 128A is the amount of tax demanded in the notice/statement/order. Therefore, it can be paid either by debiting from electronic cash ledger or by utilising the Input Tax Credit (ITC), by debiting the electronic credit ledger, or partly from both. However, where the demand is in respect of any amount of tax to be paid by the recipient under Reverse Charge Mechanism or by the Electronic Commerce Operator under Section 9(5), then the said amount shall be required to be paid by debiting the electronic cash ledger only and not through the electronic credit ledger. Further, where the amount has to be paid for demand of erroneous refund, the demand in respect of erroneous refund paid in cash is required to be paid only by debiting the electronic cash ledger only and not through the electronic credit ledger.
14	Whether the benefit of waiver under Section 128A be availed qua import IGST payable under the Customs Act, 1962?	No. In such cases, demand is not issued under Section 73 of the CGST Act, but is issued under the provisions of Customs Act, 1962 and therefore, such cases are not covered under waiver of interest or penalty or both under Section 128A.
15	With retrospective insertion of sub-sections (5) and (6) to Section 16 of the CGST Act, the tax demanded in notice/statement/ order reduces. Whether the entire tax amount demanded in the notice/ /statement/order has to be paid in such cases, to avail the benefit under Section 128A?	Sub-rule (5) of Rule 164 mentions that the amount payable in order to avail the benefit under Section 128A, shall be calculated after deducting the amount not payable in accordance with sub-section (5) or sub-section (6) of Section 16, from the amount payable in terms of the notice or statement or order under Section 73, as the case may be. Therefore, the applicant is required to pay only the amount that is payable, calculated after deducting the amount not payable in accordance with sub-section (5) or sub-section (6) of Section 16, from the amount payable in terms of the notice or statement or order under Section 73, as the case

1	2	3
		may be, before submitting the application. While calculating the amount deductible on account of not being payable in accordance with sub-section (5) or sub-section (6) of Section 16, from the amount payable in terms of the notice or statement or order under Section 73, as the case may be, taxpayer is required to ensure that such amount is deducted only where ITC has been denied solely on account of contravention of Section 16(4) of the CGST Act and not on any other grounds. He is also advised to provide a breakup of the amount not payable by him anymore, as per sub-sections (5) and (6) of Section 16, in FORM GST SPL-01 or FORM GST SPL-02, as the case may be, to enable the officer to verify the payment easily. It is also re-iterated that where the taxpayer is deducting the amount of ITC which was denied on account of contravention of sub-section (4) of Section 16 of the CGST Act, but which is now available, as per retrospectively inserted provisions of sub-section (5) or sub-section (6) of Section 16 of the CGST Act, he is not required to file application for rectification in respect of the same as per special procedure notified under Section 148 vide notification No. 22/2024-Central tax dated 8th October, 2024.
16	In case of application in FORM GST SPL-02, where the applicant has paid full or partial amount of tax through FORM GST DRC-03, whether the said applicant is mandatorily required to file application in FORM GST DRC-03A for such tax amount which he desires to get adjusted against tax demand as per FORM GST DRC-07/FORM GST DRC-08/FORM GST APL-04?	Yes. In cases where order in FORM GST DRC-07, FORM GST DRC-08 or FORM GST APL-04, as the case may be, has been issued and such taxpayer has paid required amount through FORM GST DRC-03, such applicant is required to adjust the said amount towards the demand created in the Electronic Liability Register, as per the second proviso to sub-rule (2) of Rule 164, before filing the application in FORM GST SPL-02.

5. It is requested that suitable trade notices may be issued to publicize the contents of this Circular.

6. Difficulty, if any, in implementation of the above instructions may please be brought to the notice of the Board. Hindi version would follow.

Sanjay Mangal, Principal Commissioner (GST).

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