

CBIC ISSUES CIRCULARS PURSUANT TO THE RECOMMENDATIONS MADE IN 54TH MEETING OF THE GST COUNCIL

Pursuant to the recommendations made in the 54th meeting of the GST Council held on 9 September 2024, CBIC has issued various Circulars *inter alia* providing for regularization of GST liability for the past period as well as interpreting the scope of the phrase '**regularized on as is where is**' basis and also clarifying various issues pertaining to extension of time limit to claim ITC for the period July 2017 to March 2021 under the newly introduced sections 16(5) and 16(6) as well as the scheme for waiver of interest and penalty on payment of full tax amount as per notice/statement for the period July 2017 to March 2020 under newly introduced section 128A of the CGST Act.

Clarifications in respect of GST rate / classification of goods / services

1. Effective 10 October 2024, the GST rate of 12% applies to extruded or expanded products, savoury or salted (other than un-fried or uncooked snack pellets, by whatever name called, manufactured through the process of extrusion) falling under HSN code 1905 9030. In this regard, it has been clarified that the revised GST rates would apply prospectively i.e., from 10 October 2024. However, for the past period i.e., up to 9 October 2024, these goods would be leviable to GST @ 18%.
2. It has been clarified that Roof Mounted Package Unit (RMPU) Air Conditioning Machines for Railways are classifiable under HSN 8415, and consequently, attract GST @ 28%.
3. **Classification of seats for two-wheelers and four-wheelers:**
 - a. Explanatory Note for HSN 8714 (parts and accessories of two-wheelers) has a list of inclusions, which has a mention of saddles (Seats). Accordingly, for two-wheelers (under HSN 8711), the seats would be classifiable under HSN 8714 attracting GST @ 28%.
 - b. As regards seats for four-wheelers, HSN 9401 covers '**Seats, whether or not convertible into beds and part thereof**'. Further, Explanatory Note of HSN 9401 provides that seats for vehicles (four-wheelers) are covered under the ambit of HSN 9401 attracting GST @ 18%.

However, to bring parity in the applicable GST rate on seats for two-wheelers and four-wheelers, effective 10 October 2024, the GST rate on car seats is increased to 28%. In this regard, it has been clarified that the enhanced GST of 28% on car seats would apply on a prospective basis i.e., from 10 October 2024.

4. The activity of affiliation by universities/educational boards/councils/other similar bodies is to monitor and ensure whether the colleges/schools possess 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 or to operate under the aegis of such boards or councils. In this regard, it has been clarified that:
 - a. Such affiliation services are not by way of admission of students to colleges/schools or for conduct of examinations by such colleges/schools and hence, are not covered under the purview of exemption provided to educational institutions. Such services attract GST @ 18%.
 - b. However, effective 10 October 2024, 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 are exempted from the levy of GST.
 - c. CBIC *vide* Circular No. 151/07/2021-GST dated 17 June 2021 had clarified that accreditation services of boards are leviable to GST @ 18%. However, for the past period i.e., from 1 July 2017 to 17 June 2021, the payment of GST on affiliation¹ services provided by Central and State educational boards or Councils or other similar bodies, to all schools is regularized on 'as is where is' basis.
5. It is clarified that flying training courses conducted by Flying Training Organization (FTO) approved by the Directorate General of Civil Aviation (DGCA) wherein the DGCA mandates the requirement of a completion certificate, are covered under the purview of the exemption entry pertaining to the services provided by educational institutions to its students, faculty and staff.
6. Effective 10 October 2024, GST is leviable @ 5% on transportation of passengers, with or without accompanied baggage, by air, in a helicopter on seat share basis. However, for the past period i.e., till 9 October 2024, the payment of GST on such services has been regularized on '**as is where is**' basis. It is further clarified that transportation of passengers by helicopter other than on seat share basis i.e., for charter operation will continue to attract GST @ 18%.

¹ Editor's note: While Circular No. 234/28/2024-GST uses the phrase 'affiliation', Circular No. 151/07/2021-GST uses the word 'accreditation'

7. It is clarified that ancillary or incidental services provided by Goods Transport Agency (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 GTA services for transportation of goods. The method of invoicing used by GTAs will not generally alter the nature of the composite supply of services. 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 GTA services for transportation of goods.
8. Effective 10 October 2024, as per Notification No. 08/2024-Integrated Tax (Rate) dated 8 October 2024, 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 exempted from the levy of GST. However, for the past period i.e., up to 9 October 2024, the payment of GST on such services has been regularized on '**as is where is**' basis.
9. It is clarified that location charges or Preferential Location Charges (PLC) paid along with the consideration for 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 services.
10. Effective 10 October 2024, 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 have been exempted from the levy of GST. However, for the past period i.e., till 9 October 2024, the payment of GST on such services has been regularized on '**as is where is**' basis.
11. Prior to 1 October 2021, supply by a distributor to the exhibitors for granting theatrical rights (where the exhibitors act on a principal basis to acquire and distribute films) could be covered under the following entries dealing with licensing of rights to broadcast or show films:
 - a. 'Motion Picture, videotape and television programme distribution services' (HSN 9996) attracting GST @ 18%; or
 - b. 'Temporary or permanent transfer or permitting the use or enjoyment of intellectual property right in respect of goods other than IT technology software' (HSN 9973) attracting GST @ 12%.

Considering the same, the GST liability on such services has been regularized for the period 1 July 2017 to 30 September 2021 on 'as is where is' basis.

[Source - Circular Nos. 234/28/2024-GST and 235/29/2024-GST dated 11 October 2024]

Interpretation of the phrase '**regularized on as is where is**' basis

1. 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.
2. In the context of GST, this phrase means that the payment made at the 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. Thus, the payments made or exemption claimed (if any) by the taxpayer on a transaction / supply declared in the GST returns would be treated towards the full discharge of tax liability.
3. By way of an illustration, it has been clarified that where there exists an interpretational issue on the applicable GST rate on a product (say, between 5% and 12%) and the GST Council has recommended the applicable rate of GST (say 12%) and regularizes the payment of GST for the past period, the following possibilities could arise:
 - a. **If taxpayers have discharged GST @ 5%** - Since the tax liability for the past period is regularized, the tax paid by the taxpayer would be considered as fully paid and the taxpayer would not be liable for payment of differential 7% GST.
 - b. **If taxpayers have discharged GST @ 12%** - The taxpayer would not be eligible to claim refund of tax paid.
 - c. **If no tax is discharged by the taxpayers** - In such a scenario, the benefit of the regularization would not be available to such taxpayers and they would be liable to discharge GST @ 12% on the supplies made in the past period.

[Source - Circular No. 236/30/2024-GST dated 11 October 2024]

Clarification on implementation of section 16(5) and 16(6) of CGST Act

Pursuant to the amendment of Section 16 of the Central Goods and Services Tax Act, 2017 (CGST Act), CBIC had issued Notification No. 22/2024-Central Tax² dated 8 October 2024 (NN 2024) stipulating the special procedure for rectification of orders for a person against whom an order under Sections 73 / 74 / 107 / 108 of the CGST Act was issued *inter alia* confirming demand for wrong availment of input tax credit (ITC) on account of contravention of the time limit prescribed under section 16(4) of CGST Act and where ITC is now admissible in terms of the amended section 16.

In respect of the aforesaid special procedure, the following clarifications have been issued by CBIC:

1. Where no demand notice / statement has been issued under sections 73 / 74 of CGST Act (SCNs), including cases where intimation in Form GST DRC-01A has been issued, the proper officer should take cognizance of the amended section 16 of the CGST Act and take appropriate action.
2. Where SCNs have been issued but are pending for adjudication, the proper officer should consider the amended section 16 of the CGST Act and pass appropriate order.
3. Where an appeal is filed before the First Appellate Authority (FAA) and no order is issued, the FAA should take cognizance of the amended section 16 of the CGST Act and pass appropriate orders. Similarly, where matter is pending before the Revisional Authority, the Revisional Authority should consider the amended Section 16 and pass suitable orders.

² Our alert on the notification can be accessed by clicking [here](#)

4. It is also clarified that only in cases where an order has been passed by the FAA / Revisional Authority (as the case may be) and no appeal has been filed with the GST Appellate Tribunal (GSTAT), the concerned taxpayer may apply for rectification of such order under the special procedure provided in NN 22/2024 within a period of six months from the date of issuance of the said notification i.e., from 8 October 2024.
5. It is also clarified that in terms of Section 150 of the Finance (No. 2) Act, 2024, no refund of tax already paid / ITC reversed would be available where such tax has already been paid or ITC has already been reversed.
6. It is further clarified that the application for rectification of orders under the aforesaid special procedure can be initiated only in cases where ITC is denied on account of contravention of the time limit provided under section 16(4). In other cases, the rectification application may be filed by the taxpayer as per section 161 of the CGST Act, within the time limit specified therein.
7. Further, the stepwise procedure for filing the rectification application has also been prescribed.

[Circular No. 237/31/2024-GST dated 15 October 2024]

Clarifications pertaining to section 128A of CGST Act

The GST Amnesty scheme for waiver of interest or penalty or both relating to demands under Section 73 of CGST Act for FY 2017-18 to FY 2019-20 has been introduced under Section 128A of CGST Act. The procedures and conditions for availing the benefit under the aforesaid amnesty scheme were notified under notification no. 20/2024-Central Tax³ dated 8 October 2024. In this regard, the circular has summarised the process and has issued the following clarifications to address various doubts pertaining to the procedures and conditions for availing the benefit under the amnesty scheme:

1. Irrespective of whether the payment towards tax demands is made prior to or after the date on which Section 128A of CGST Act comes into effect, the benefit under the amnesty scheme would be available to all eligible cases where the amounts are paid towards the demand up to the date notified under Section 128A(1) of CGST Act and was intended to be paid towards the said demand.
2. The amounts 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 under the amnesty scheme in respect of such demand.
3. The amounts recovered by the tax officers as interest or penalty or both cannot be adjusted towards the amount payable as tax. Further, no refund of such amount of interest or penalty or both is available.
4. Where the tax due is already paid and the notice / demand orders only pertains to demand towards interest and / or penalty, the same shall be considered for availing benefit under the amnesty scheme. However, such benefit will not apply in cases where interest is demanded for delayed filing of returns or for delayed reporting of any supply in the return, because such interest relates to self-assessed liability and is directly recoverable under section 75(12) of CGST Act.
5. The benefit under section 128A is not 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.
6. Where the notice / order involves the demand of tax, partially for the period mentioned in Section 128A(1) and partially for other periods, the application under the amnesty scheme may be filed only after payment of full amount of tax demanded in the said notice or statement or order.
However, the waiver of interest or penalty or both under the amnesty scheme shall only be applicable for the period specified in section 128A and not for other periods. Consequently, the taxpayer will be liable for discharging interest or penalty or both for such other tax periods. The aforesaid amount of interest or penalty or both shall be required to be paid within 3 months from the date of issuance of order in Form GST SPL-05 or GST SPL-06, as the case may be, failing which, the waiver of interest or penalty or both shall become void.
7. Similarly, if the notice / statement / order involves multiple issues *inter alia* including demand of erroneous refund, the benefit under the amnesty scheme can be availed by the taxpayer, subject to payment of full amount of the tax demanded in the said notice / statement / order.
However, the waiver of interest or penalty or both under the amnesty scheme shall not be applicable in respect of demands pertaining to erroneous refund. Consequently, the taxpayer will be liable for discharging interest or penalty or both in respect of demands pertaining to erroneous refund. The aforesaid amount of interest or penalty or both shall be required to be paid within 3 months from the date of issuance of order in Form GST SPL-05 or GST SPL-06, as the case may be, failing which, the waiver of interest or penalty or both shall become void.
8. Even in cases where an order in form GST SPL-05 or GST SPL-06 has been issued, the conclusion of proceedings under the amnesty scheme will be subject to the condition that the taxpayer pays the additional tax amount as determined by FAA / GSTAT / Court / Revisional Authority vide order enhancing the tax liability in respect of the appeal filed by the tax authorities. The additional tax amounts are required to be paid within 3 months from the date of issuance of the order enhancing the tax liability, failing which, the waiver of interest or penalty or both shall become void.
9. The condition and the procedure pertaining to withdrawal of appeal or writ petition would also apply to Special Leave Petitions filed before the Supreme Court.
10. The benefit provided under the amnesty scheme will also be available for matters involving IGST and Compensation Cess. Accordingly, it is clarified that full payment of tax means payment of CGST, SGST, IGST and Compensation Cess demanded in the notice / statement / order, as the case may be.
11. The transitional credit is considered to be availed on the date on which the said amount is credited in the Electronic Credit Ledger. As per Rule 121 read with Rule 117(3) of the Central Goods and Services Tax Rules, 2017 (CGST Rules), any demand in respect of transitional credit wrongly availed, whether wholly or partially, can be made under sections 73 or 74 of CGST Act. Hence, it is clarified that if the amount of transitional credit is 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 the amnesty scheme.

³ Our alert on the notification can be accessed by clicking [here](#)

12. Any penalty, including penalties under sections 73, 122, 125, etc. demanded under the notice / statement / order issued under section 73 can be waived under the amnesty scheme. However, late fee, redemption fine, etc. are not covered under the waiver provided thereunder.
13. The payment of tax under the amnesty scheme can be made either by debiting the Electronic Cash Ledger or by utilising the ITC by debiting the Electronic Credit Ledger, or partly from both. However, in respect of tax payable by the recipient under reverse charge mechanism or by the Electronic Commerce Operator under section 9(5), the payment of tax under this scheme can be made only by debiting the Electronic Cash Ledger. Similarly, in respect of demand of erroneous refund (if any), the tax is required to be paid only by debiting Electronic Cash Ledger.
14. The benefit of amnesty scheme cannot be availed *qua* IGST payable on import of goods under the Customs law because the demand in such cases is not issued under section 73 of the CGST Act but is issued under the provisions of the Customs law.
15. Pursuant to the retrospective insertion of Sections 16(5) and 16(6) of CGST Act, additional ITC may be available to a taxpayer. The taxpayer opting for amnesty scheme is required to determine the amount payable after deducting such additional credits (being solely on account of ITC denial due to contravention of the time limit prescribed under section 16(4) of CGST Act and where such ITC is now admissible in terms of the amended section 16) from the amounts payable in terms of the notice / statement / order. It is also advisable to provide breakup of the additional credits available to the taxpayer and hence, not payable under the amnesty scheme to enable the proper officer to verify the payment easily.

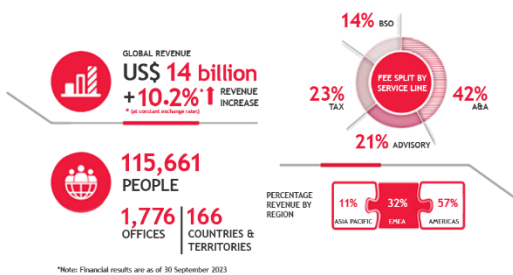
[Circular No. 238/32/2024-GST dated 15 October 2024]

BDO Comments

These Circulars have been issued to give effect to the recommendations of the 54th meeting of the GST Council held on 9 September 2024. There were various open issues with respect to the amnesty scheme under section 128A and extension of time period for claiming ITC for specified period under section 16(5) and 16(6) which have been resolved by the circulars.

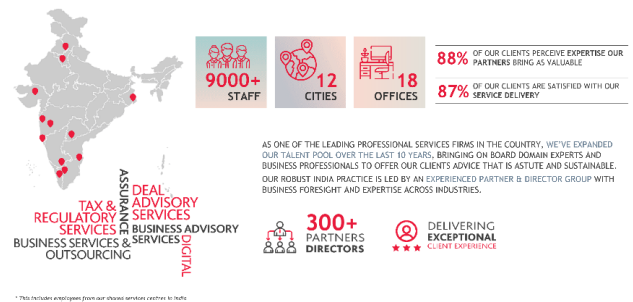
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