

4. The proper officer shall first seek the details from the registered person regarding all the invoices on which ITC has been availed by the registered person in his FORM GSTR 3B but which are not reflecting in his FORM GSTR 2A. He shall then ascertain fulfillment of the following conditions of Section 16 of CGST Act in respect of the input tax credit availed on such invoices by the said registered person:

- i) that he is in possession of a tax invoice or debit note issued by the supplier or such other tax paying documents;
- ii) that he has received the goods or services or both;
- iii) that he has made payment for the amount towards the value of supply, along with tax payable thereon, to the supplier.

Besides, the proper officer shall also check whether any reversal of input tax credit is required to be made in accordance with Section 17 or Section 18 of CGST Act and also whether the said input tax credit has been availed within the time period specified under sub-section (4) of Section 16 of CGST Act.

4.1 In order to verify the condition of Clause (c) of sub-section (2) of Section 16 of CGST Act that tax on the said supply has been paid by the supplier, the following action may be taken by the proper officer:

4.1.1 In case, where difference between the ITC claimed in FORM GSTR-3B and that available in FORM GSTR 2A of the registered person in respect of a supplier for the said financial year exceeds Rs. 5 lakh, the proper officer shall ask the registered person to produce a certificate for the concerned supplier from the Chartered Accountant (CA) or the Cost Accountant (CMA), certifying that supplies in respect of the said invoices of supplier have actually been made by the supplier to the said registered person and the tax on such supplies has been paid by the said supplier in his return in FORM GSTR 3B. Certificate issued by CA or CMA shall contain UDIN. UDIN of the certificate issued by CAs can be verified from ICAI website <https://udin.icaai.org/search-udin> and that issued by CMAs can be verified from ICMAI website <https://eicmai.in/udin/VerifyUDIN.aspx>.

4.1.2 In cases, where difference between the ITC claimed in FORM GSTR-3B and that available in FORM GSTR 2A of the registered person in respect of a supplier for the said financial year is upto Rs. 5 lakh, the proper officer shall ask the claimant to produce a certificate from the concerned supplier to the effect that said supplies have actually been made by him to the said registered person and the tax on said supplies has been paid by the said supplier in his return in FORM GSTR 3B.

4.2 However, it may be noted that for the period FY 2017-18, as per proviso to Section 16(4) of CGST Act, the aforesaid relaxations shall not be applicable to the claim of ITC made in the FORM GSTR-3B return filed after the due date of furnishing return for the month of September, 2018 till the due date of furnishing return for March, 2019, if supplier had not furnished details of the said supply in his FORM GSTR-1 till the due date of furnishing FORM GSTR 1 for the month of March, 2019.

5. It may also be noted that the clarifications given hereunder are case specific and are applicable to the bonafide errors committed in reporting during FY 2017-18 and 2018-19.

Further, these guidelines are clarificatory in nature and may be applied as per the actual facts and circumstances of each case and shall not be used in the interpretation of the provisions of law.

6. These instructions will apply only to the ongoing proceedings in scrutiny/audit/investigation, etc. for FY 2017-18 and 2018-19 and not to the completed proceedings. However, these instructions will apply in those cases for FY 2017-18 and 2018-19 where any adjudication or appeal proceedings are still pending.

7. Difficulty, if any, in the 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/26-4/2022-23/F/3301

Subject: Clarification on the entitlement of input tax credit where the place of supply is determined in terms of the proviso to sub-section (8) of Section 12 of the Integrated Goods and Services Tax Act, 2017-reg.

Ref.: Circular No. 184/16/2022-GST dated 27th December, 2022 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, GOI, New Delhi.

Circular

(No. 15/2022-23-GST)

Central Board of Indirect Taxes and Customs (CBIC) has issued the above referred circular. For the uniformity, it has been decided that the said Circular issued by the CBIC is being made applicable, *mutatis mutandis*, in implementation of

the Goa GST Act, 2017. Copy of the referred CBIC Circular is attached herewith.

This Trade Circular is clarificatory in nature. Difficulty, if any, in implementation of this Circular may please be brought to the notice of the undersigned.

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

Panaji, 7th February, 2023.

Circular No. 184/16/2022-GST

F. No. CBIC-20001/2/2022-GST

Government of India

Ministry of Finance

Department of Revenue

Central Board of Indirect Taxes and Customs

GST Policy Wing

New Delhi, Dated the 27th December, 2022.

To,

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

The Principal Directors General/Directors General (All).

Madam/Sir,

Subject: Clarification on the entitlement of input tax credit where the place of supply is determined in terms of the proviso to sub-section (8) of Section 12 of the Integrated Goods and Services Tax Act, 2017-reg.

Attention is invited to sub-section (8) of Section 12 of Integrated Goods and Services Tax Act, 2017 (hereinafter referred to as "IGST Act") which provides for the place of supply of services by way of transportation of goods, including by mail or courier, where location of the supplier as well as the recipient of services is in India. As per Clause (a) of the aforesaid sub-section, the place of supply of services by way of transportation of goods, including by mail or courier, to a registered person shall be the location of such registered person. However, the proviso to the aforesaid sub-section which was inserted vide the Integrated Goods and Services Tax (Amendment) Act, 2018 w.e.f. 01-02-2019 provides that where the transportation of goods is to a place outside India, the place of supply of the said service shall be the place of destination of such goods. In such cases, as the place of supply of services, as per the proviso to sub-section (8) of Section 12 of IGST Act, is the concerned foreign destination and not the State where the recipient is registered under GST, doubts are being raised regarding the availability of input tax credit of the said services to the recipient located in India.

2. In order to clarify this 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 issues as under:

Sr. No.	Issue	Clarification
1.	In case of supply of services by way of transportation of goods, including by mail or courier, where the transportation of goods is to a place outside India, and where the supplier and recipient of the said supply of services are located in India, what would be the place of supply of the said services?	The place of supply of services by way of transportation of goods, including by mail or courier, where both the supplier and the recipient are located in India, is determined in terms of sub-section (8) of Section 12 of the IGST Act which reads as follows: <i>"(8) The place of supply of services by way of transportation of goods, including by mail or courier to,—</i> <i>(a) a registered person, shall be the location of such person;</i> <i>(b) a person other than a registered person, shall be the location at which such goods are handed over for their transportation:</i> <i>Provided that where the transportation of goods is to a place outside India, the place of supply shall be the place of destination of such goods"</i> Hence, in case of supply of services by way of transportation of goods, including by mail or

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		courier, where the transportation of goods is to a place outside India, and where the supplier and recipient of the said supply of services are located in India, the place of supply is the concerned foreign destination where the goods are being transported, in accordance with the proviso to the sub-section (8) of Section 12 of IGST Act, which was inserted vide the Integrated Goods and Services Tax (Amendment) Act, 2018 w.e.f. 01-02-2019. Illustration: <i>X is a person registered under GST in the State of West Bengal who intends to export goods to a person Y located in Singapore. X avails the services for transportation of goods by air to Singapore from an air cargo operator Z, who is also registered under GST in the State of West Bengal.</i> <i>In this case, the place of supply of the services provided by Z to X is the place of destination of goods i.e., Singapore, in terms of the proviso to sub-section (8) of Section 12 of IGST Act.</i>
	2. In the case given in Sl. No. 1, whether the supply of services will be treated as inter-State supply or intra-State supply?	The aforesaid supply of services would be considered as inter-State supply in terms of sub-section (5) of Section 7 of the IGST Act since the location of the supplier is in India and the place of supply is outside India. Therefore, Integrated Tax (IGST) would be chargeable on the said supply of services. In respect of the illustration given in Sl. No. 1 above, Z would charge IGST from X in terms of sub-section (5) of Section 7 of the IGST Act, for supply of services by way of transportation of goods.
	3. In the case given in Sl. No. 1, whether the recipient of service of transportation of goods would be eligible to avail input tax credit in respect of the said input service of transportation of goods?	Section 16 of the CGST Act lays down the eligibility and conditions for taking input tax credit whereas, Section 17 of the CGST Act provides for apportionment of credit and blocked credits under circumstances specified therein. The said provisions of law do not restrict availment of input tax credit by the recipient located in India if the place of supply of the said input service is outside India. Thus, the recipient of service of transportation of goods shall be eligible to avail input tax credit in respect of the IGST so charged by the supplier, subject to the fulfilment of other conditions laid down in Section 16 and 17 of the CGST Act. In the illustration given in Sl. No. 1 above, X would be eligible to take input tax credit of IGST in respect of supply of services received by him from Z, subject to the fulfilment of other conditions laid down in Section 16 and 17 of the CGST Act

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4.	In the case mentioned at Sl. No. 1, what State Code has to be mentioned by the supplier of the said service of transportation of goods, where the transportation of goods is to a place outside India, while reporting the said supply in FORM GSTR-1?	The supplier of services shall report the place of supply of such service by selecting State Code as '96-Foreign Country' from the list of codes in the drop-down menu available on the portal in Form GSTR-1.

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/26-4/2022-23/F/3302

Subject: Clarification with regard to applicability of provisions of Section 75(2) of Central Goods and Services Tax Act, 2017 and its effect on limitation-reg.

Ref: Circular No. 185/17/2022-GST dated 27th December, 2022 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, GOI, New Delhi.

Circular

(No. 16/2022-23-GST)

Central Board of Indirect Taxes and Customs (CBIC) has issued the above referred circular. For the uniformity, it has been decided that the said Circular issued by the CBIC is being made applicable, *mutatis mutandis*, in implementation of the Goa GST Act, 2017. Copy of the referred CBIC Circular is attached herewith.

This Trade Circular is clarificatory in nature. Difficulty, if any, in implementation of this Circular may please be brought to the notice of the undersigned.

S. S. Gill, IAS, Commissioner of State Taxes.
Panaji 7th February, 2023.

Circular No. 185/17/2022-GST

F. No. CBIC-20001/2/2022

Government of India

Ministry of Finance

Department of Revenue

Central Board of Indirect Taxes and Customs

GST Policy Wing

New Delhi, Dated the 27th December, 2022.

To,

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

The Principal Directors General/Directors General (All).

Subject: Clarification with regard to applicability of provisions of Section 75(2) of Central Goods and Services Tax Act, 2017 and its effects on limitation-reg.

Madam/Sir,

Attention is invited to sub-section (2) of Section 75 of Central Goods and Services Tax Act, 2017 (hereinafter referred to as "CGST Act") which provides that in cases where the appellate authority or appellate tribunal or court concludes that the notice issued by proper officer under sub-section (1) of Section 74 is not sustainable for reason that the charges of fraud or any willful-misstatement or suppression of facts to evade tax have not been established against the person to whom such notice was issued (hereinafter called as "noticee"), then the proper officer shall determine the tax payable by the noticee, deeming as if the notice was issued under sub-section (1) of Section 73.

2. Doubts have been raised by the field formations seeking clarification regarding the time limit within which the proper officer is required to re-determine the amount of tax payable considering notice to be issued under sub-section (1) of Section 73, specially in cases where time limit for issuance of order as per sub-section (10) of Section 73 has already been over. Further, doubts have also been expressed regarding the methodology for computation of such amount payable by the noticee, deeming the notice to be issued under sub-section (1) of Section 73.