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