

# TAX CONNECT

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## EDITORIAL



### Friends,

The GSTIN issued advisory dated 17<sup>th</sup> October 2024 regarding new Invoice Management System (IMS). The IMS is now available to taxpayers on the GST portal, designed to simplify the process of managing invoices and claiming Input Tax Credit (ITC). With IMS, taxpayers can efficiently reconcile their records with those issued by their suppliers, ensuring they claim the correct ITC. The system allows users to easily accept, reject, or keep invoices pending based on their needs, offering flexibility to manage invoices over time. This new functionality aims to streamline the process of claiming ITC, reducing errors and disputes related to ITC claims.

The GSTIN also issued Additional FAQ on IMS along with the above mentioned advisory to clarify the followings:

1. IMS is launched from GSTR-2B return period of Oct'24. Hence, all the records eligible for GSTR2B of Oct'24 return period onwards will be made available on the IMS dashboard. All the invoices which are part of GSTR- 2B of Sep'24 or older return periods will not be reflecting in IMS.
2. The first draft GSTR-2B on the basis of actions taken on invoices/records in the Invoice Management System dashboard would be generated and made available to all the taxpayers on 14th Nov 2024 for the return period Oct'24.
3. Taxpayer can take action on the invoices/records in their IMS dashboard and recompute their GSTR-2B of Oct 24' return period even after 14th November 2024 till the time the taxpayer files his GSTR-3B.
4. It is not mandatory to act on records in IMS dashboard for GSTR2B generation. The records where no action is taken by the recipient would be treated as accepted by the system and a GSTR-2B would be generated as it is generated presently.
5. Rejection of an invoice/debit note should be done very carefully as rejection will result in no ITC for the recipient. A record may be rejected if it does not pertain to the recipient, or the detail of the record is erroneous to such an extent that CN and DN cannot handle the situation.

6. In case the recipient taxpayer erroneously rejects an invoice in IMS, then the same invoice can be accepted in IMS again before filing of GSTR-3B. After accepting the said invoice, the recipient taxpayer should recompute the updated GSTR-2B for availing the credit in GSTR 3B for the FY 2023-24.
7. In such cases recipient can accept the said credit note in IMS. As recipient had already reversed the ITC, there is no need for reversal of ITC again in case of such credit note.
8. The recipient will not be able to take an action on an upward amended invoice/debit notes, if the said amended record has only been saved by supplier in GSTR-1/GSTR-1A/IFF but the same record has not been filed. The recipient will be able to take action once the supplier files such record.
9. In the absence of linkage of Credit Note with the corresponding invoices, system cannot understand whether original invoice for this Credit Note was accepted or rejected. Therefore, if the invoice is not correct, then it is advisable to rectify the mistake through amendment of invoices in the GSTR 1 instead of issuance of a Credit Note.
10. Credit Note cannot be kept pending in the IMS by the recipient as the supplier has reduced its outward tax liability at the time of issuance of credit note. IMS does not change the existing flow where the documents/records reported by the supplier in the GSTR 1 is accepted and corresponding impact is reflected in the GSTR 2B. Now because of IMS, an additional option has been provided to recipient to reject the credit note if it does not belong to him.
11. If a credit note is rejected by the recipient, the liability of the supplier is increased on the portal to that extent in the GSTR 3B of subsequent tax period and not in the GSTR 3B of same tax period.

The first GSTR-2B report, reflecting the actions taken within IMS, will be generated for the return period of October 2024 and made available on November 14, 2024. The readiness of ASP/GSP or ERP system will play a crucial role in the accurate filing of returns.

**Just to reiterate that we remain available over telecom or e-mail.**

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# TAX CALENDAR

Date	Form/Return/Challan	Reporting Period	Description
20 <sup>th</sup> October	GSTR-3B	September 2024	Summary return of outward supplies and input tax credit claimed, along with payment of tax by a registered person with aggregate turnover exceeding INR 5 Crores during the preceding financial year or any registered person who has opted to file monthly return.
20 <sup>th</sup> October	GSTR-5A	September 2024	Summary of monthly outward taxable supplies and tax payable by a person supplying OIDAR services.
22 <sup>nd</sup> October	GSTR-3B	July-September 2024	Summary return of outward supplies and input tax credit claimed, along with payment of tax by a registered person with aggregate turnover exceeding INR 5 Crores during the preceding financial year or any registered person who has opted to file monthly return. (Category I states)
24 <sup>th</sup> October	GSTR-3B	July-September 2024	Summary return of outward supplies and input tax credit claimed, along with payment of tax by a registered person with aggregate turnover exceeding INR 5 Crores during the preceding financial year or any registered person who has opted to file monthly return. (Category II states)
25 <sup>th</sup> October	ITC-04	April-September 2024	Half-yearly/yearly summary of goods sent to or received from a job-worker for those with a turnover of more than and up to Rs.5 crore in the given FY, respectively

# INCOME TAX

## NOTIFICATION

**CENTRAL GOVERNMENT SPECIFIES THAT NO COLLECTION OF TAX SHALL BE MADE UNDER SUB-SECTION (1F) OF SECTION 206C OF THE IT ACT ON ANY PAYMENT RECEIVED FROM THE RESERVE BANK OF INDIA.**

**OUR COMMENTS:** The Central Board of Direct Taxes vide Notification No. 115/2024 dated 16.10.2024 notified that in exercise of the powers conferred by sub-section (12) of section 206C of the Income-tax Act, 1961 (43 of 1961), the Central Government hereby specifies that no collection of tax shall be made under sub-section (1F) of section 206C of the said Act on any payment received from the Reserve Bank of India.

2. This notification shall come into force on the date of its publication in the Official Gazette.

**[For further details please refer the Notification]**

## NOTIFICATION

### INCOME-TAX (NINTH AMENDMENT) RULES, 2024

**OUR COMMENTS:** The Central Board of Direct Taxes vide Notification No. 114/2024 dated 16.10.2024 notified that in exercise of the powers conferred by section 295 read with section 206C of the Income tax Act, 1961 (43 of 1961), the Central Board of Direct Taxes hereby makes the following rules further to amend the Income-tax Rules, 1962, namely:—

1. (1) These rules may be called the Income-tax (Ninth Amendment) Rules, 2024.

(2) They shall come into force on the date of their publication in the Official Gazette.

2. In the Income-tax Rules, 1962,—

(a) in rule 31AA, in sub-rule (4), —

(i) in clause (vi), —

(A) in sub-clause (b), for the words “fourth proviso”, the words “fifth proviso” shall be substituted;

(B) in sub-clause (c), for the words “fifth proviso”, the words “sixth proviso” shall be substituted;

(ii) in clause (vii), for the word, figures and letter “section 206C.” occurring at the end, the word, figures and letter “section 206C;” shall be substituted;

(iii) after clause (vii), the following clause shall be inserted, namely: —

“(viii) furnish particulars of amount received or debited on which tax was not collected or tax was collected at a lower rate in view of any notification issued under sub-section (12) of section 206C.”;

(b) in rule 37-I,—

(i) in sub-rule (1), after the words “has been collected”, the brackets and words “(hereinafter referred to as the collectee)” shall be inserted;

(ii) after sub-rule (1), the following sub-rule shall be inserted, namely: —

“(1A) (a) Where under any provisions of the Act, the income of the collectee is assessable in the hands of any person other than the collectee, the credit for the tax collected at source, shall be given to such other person and not to the collectee:

**Provided** that the collectee shall file a declaration with the collector and the collector shall report the tax collection in the name of the other person in the information relating to collection of tax referred to in sub-rule (1).

(b) The declaration filed by the collectee under the proviso to clause (a) shall contain the name, address, permanent account number of the person to whom credit for the tax collectible at source is to be given, amount of payment in relation to which credit is to be given and reasons for giving credit to such person.

(c) The collector shall issue the certificate for collection of tax at source under sub-section (3) of section 206C of the Act, in the name of the person in whose name credit is shown in the information relating to collection of tax referred to in sub-rule (1) and shall keep the declaration in his safe custody.”;

(c) in Form No. 27EQ, in the Annexure, after Verification, in the Notes, after Note 8, the following Note shall be inserted, namely:—

'8A. Write “J” if no collection or lower collection is in view of notification issued under sub-section (12) of section 206C.'

**[For further details please refer the Notification]**

## NOTIFICATION

### INCOME-TAX (EIGHTH AMENDMENT) RULES, 2024

**OUR COMMENTS:** The Central Board of Direct Taxes vide Notification No. 112/2024 dated 15.10.2024 notified that in exercise of the powers conferred by section 295 read with section 192 of the Income-tax Act, 1961 (43 of 1961), the

# INCOME TAX

Central Board of Direct Taxes hereby makes the following rules further to amend the Income-tax Rules, 1962, namely:—

1. (1) These rules may be called the Income-tax (Eighth Amendment) Rules, 2024.

(2) They shall come into force on the date of their publication in the Official Gazette.

2. In the Income-tax Rules, 1962,—

(a) in rule 21AA, —

(i) in the marginal heading, for the word, figures and brackets “section 89(1)”, the word and figures “section 89” shall be substituted;

(ii) for the words, brackets and figures “sub-section (1) of section 89”, the word and figures “section 89” shall be substituted;

(b) for rule 26B, the following rule shall be substituted, namely: —

**“26B. Statement of particulars of income under heads of income other than "Salaries" or details of tax deducted at source or tax collected at source.** — The assessee may submit to the person responsible for making payment under sub-section (1) of section 192, the details of —

(a) any income chargeable under any head of income other than ‘Salaries’ received in the same financial year; or

(b) any tax deducted at source or tax collected at source under the provisions of Part B or Part BB of Chapter XVII, for the same financial year; or

(c) loss, if any, under the head “Income from house property” in the same financial year,

in Form No. 12BAA, for the purpose of computing the tax deduction at source under sub-section (1) of section 192.”;

(c) in Appendix II,—

(A) in Form No. 10E, —

(i) in the heading, for the word, figures and brackets “section 89(1)”, the word and figures “section 89” shall be substituted;

(ii) in Annexure I, against serial number 8, for the word, figures and brackets “section 89(1)”, the word and figures “section 89” shall be substituted;

(iii) in Annexure II, against serial number 12, for the word, figures and brackets “section 89(1)”, the word and figures “section 89” shall be substituted;

(iv) in Annexure IIA, against serial number 12, for the word, figures and brackets “section 89(1)”, the word and figures “section 89” shall be substituted;

(v) in Annexure III, against serial number 12, for the word, figures and brackets “section 89(1)”, the word and figures “section 89” shall be substituted;

(vi) in Annexure IV, against serial number 12, for the word, figures and brackets “section 89(1)”, the word and figures “section 89” shall be substituted;

(B) after Form No. 12BA, the Form No. 12BAA shall be inserted.(C) in Form No. 16, in Part B (Annexure-I), in the table, for the row numbered 19 and the entries relating thereto, the following shall be substituted, namely :—

19.	Less: Tax deducted at source as per Form No. 12BAA submitted under provisions of section 192(2B)	Rs.
20.	Less: Tax collected at source as per Form No. 12BAA submitted under provisions of section 192(2B)	Rs.
21.	Net tax payable ( 17-18-19-20)	Rs.

(D) in Form No. 24Q, in Annexure II, in the table, —

(i) in column (388), the words and brackets “or deductor(s)” shall be omitted;

(ii) after column (388), the following column shall be inserted, namely: —

“Amount reported as per section 192(2B), of other tax deducted at source or tax collected at source, other than (388) (388A)”;
--

(iii) in column (389), —

(I) after the word “deducted”, the word “/collected” shall be inserted;

(II) after the figures “388”, the figures and letter “+388A” shall be inserted.



## INCOME TAX

**[For further details please refer the Notification]**

(Applicable only for section code 2)

## NOTIFICATION

**INCOME-TAX AMENDMENT (SEVENTH AMENDMENT) RULES, 2024**

**OUR COMMENTS:** The Central Board of Direct Taxes vide Notification No. 111/2024 dated 15.10.2024 notified that In exercise of the powers conferred by section 295 read with sub-clauses (i), (ii), (iii), (iv), (v) and (vi) of clause (ac) of sub-section (1) of section 12A, first and second provisos to clause (23C) of section 10, clauses (i), (ii), (iii) and (iv) of the first proviso to sub-section (5) of section 80G of the Income-tax Act, 1961 (43 of 1961), the Central Board of Direct Taxes hereby makes the following rules further to amend the Income tax Rules, 1962, namely:—

**1. Short title and commencement: -**

(1) These rules may be called the Income-tax Amendment (Seventh Amendment) Rules, 2024.

(2) They shall deemed to have come into force from the 1st day of October, 2024.

**2. In the Income-tax Rules, 1962, in Appendix-II,—**

(a) in Form No. 10A,—

(i) in the heading, the figure, letter and word “2C or” shall be omitted;

(ii) below the table and before the heading “Notes to fill Form No. 10A”, for the portion beginning with the words and figures “I, son/daughter of” and ending with the words and brackets “(strike whichever is inapplicable)”, the following shall be substituted, namely: -

“I \_\_\_\_\_, son/daughter of \_\_\_\_\_, hereby declare that the details given in the form are true and correct to the best of my knowledge and belief.

I undertake to communicate forth which any alteration in the terms of the trust/society/nonprofit company, or in the rules governing the Institution, made at any time hereafter. I also declare that I am filing this form in my capacity as \_\_\_\_\_ (designation) having permanent account number (PAN) \_\_\_\_\_ and that I am competent to file this form and verify it.

Date:

Signature

I further undertake that I am applying for registration under the section code 2 and the activities of the \_\_\_\_\_ (Name of the institution, trust or fund) having permanent account number (PAN) \_\_\_\_\_ have not commenced on or before the date of making this application.

Date:

Signature.”;

(iii) Under the heading “Notes to fill Form No 10A”, –

(I) for the serial number 2, the following shall be substituted, namely: -

“2. Application for registration under section 12A/80G select one of the following codes in row 2:

1	Sub-clause (i) of clause (ac) of sub -section (1) of section 12A	01
2	Item (A) of sub-clause (vi) of clause (ac) of sub-section (1) of section 12A	02
11	Clause (i) of first proviso to sub-section (5) of section 80G	11
12	Sub-clause (A) of clause (iv) of first proviso to sub-section (5) of section 80G	12

(II) in serial number 7, in the table, for entries at Relevant Law/Portal “Registration u/s 10(23C) clause (iv)/(v)/(vi)/(via) of Income-tax Act, 1961”, the following shall be substituted, namely: -

“Registration u/s 10(23C) clause (iv)/(v)/(vi)/(via) of Income-tax Act, 1961	02	Mandatory	Number of Order granting approval	Date of Order	Jurisdiction details of the Income-tax Authority which granted the registration is to be provided	First date of the previous year from which the approval is effective ”;

(III) in serial number 10., –

(A) in item (a), the figures and word “07/08/09/10 or” shall be omitted;

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(B) in item (b), the figures “, 03/04/05/06” shall be omitted;

(IV) in serial number 12, in the table, –

(A) for Section code 02 and entries relating thereto, the following shall be substituted, namely: -

“02 where the applicant is created, or is established, under an instrument, self-certified copy of the instrument;

where the applicant is created, is established, otherwise than under an instrument, self-certified copy of the document evidencing the creation or establishment of the applicant;

self-certified copy of registration with Registrar of Companies or Registrar of Firms and Societies or Registrar of Public Trusts, as the case may be;

self-certified copy of registration under Foreign Contribution (Regulation) Act, 2010 (42 of 2010), if the applicant is registered under such Act;

where the applicant has been in existence during any year or years prior to the financial year in which the application for registration is made, self-certified copies of the annual accounts of the trust or institution relating to such prior year or years (not being more than three years immediately preceding the year in which the said application is made) for which such accounts have been made up;

where a business undertaking is held by the applicant as per the provisions of sub-section (4) of section 11 and the applicant has been in existence during any year or years prior to the financial year in which the application for registration is made, self-certified copies of the annual accounts of such business undertaking relating to such prior year or years (not being more than three years immediately preceding the year in which the said application is made) for which such accounts have been made up and self- certified copy of the report of audit as per the provisions of section 44AB for such period;

self-certified copy of order of rejection of application, for grant of registration under section 12A or section 12AA or section 12AB or the approval under section 10(23C), as the case may be, if any;”;

(B) Section code “03/04/05/06” and entries relating thereto, shall be omitted;

(C) Section code “07/08/09/10” and entries relating thereto, shall be omitted;

(D) for Section code “1, 3, 4, 5, 6, 11” and entries relating thereto, the following shall be substituted, namely: -

“1, 11	Self-certified Affidavit where the applicant does not have earlier issued registration or approval certificate.”.
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(b) in Form No. 10AB,–

(i) in the heading, the figure, letter and word “2C or” shall be omitted;

(ii) below the table and before the heading “Notes to fill Form No. 10AB”, for the portion beginning with the words and figures “I \_\_\_\_\_, son/daughter of” and ending with the words and brackets “(strike whichever is inapplicable)”, the following shall be substituted, namely: -

“I \_\_\_\_\_, son/daughter of \_\_\_\_\_, hereby declare that the details given in the form are true and correct to the best of my knowledge and belief.

I undertake to communicate forth with any alteration in the terms of the trust/society/non-profit company, or in the rules governing the Institution, made at any time hereafter. I further declare that I am filing this form in my capacity as \_\_\_\_\_(designation) having permanent account number (PAN) \_\_\_\_\_ and that I am competent to file this form and verify it.

Date:

Signature

(Applicable only for section code 4A)

I further undertake that I am applying for registration under the section code 4A having commenced activities on dd/mm/yyyy and also that no income or part thereof of the \_\_\_\_\_ (Name of the institution, trust or fund) having permanent account number (PAN) \_\_\_\_\_ has been excluded from the total income on account of applicability of sub-clause (iv) or sub-clause (v) or sub-clause (vi) or sub-clause (via) of clause (23C) of section 10 or section 11 or 12 for any previous year ending on or before the date of making this application on dd/mm/yyyy, at any time after the commencement of such activities.

Date:



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Signature.”;

(iii) Under the heading “Notes to fill Form No. 10AB”, in serial number 2, in the table, the numbers 5, 6, 7, 8, 9, 10, 11, 12, 12A, 12B, 12C, 12D and the entries relating thereto, shall be omitted.

**[For further details please refer the Notification]**

## CIRCULAR

### GUIDANCE NOTE 1/2024 ON PROVISIONS OF THE DIRECT TAX VIVAD SE VISHWAS SCHEME, 2024

**OUR COMMENTS:** The Central Board of Direct Taxes vide Circular No. 12/2024 dated 15.10.2024 clarified that The Direct Tax Vivad Se Vishwas Scheme, 2024 (hereinafter referred as DTVSV Scheme, 2024) has been enacted vide Chapter IV of Finance (No.2) Act, 2024 to provide for dispute resolution in respect of pending income tax litigation. The objective of the Scheme is to, inter alia, reduce pending income tax litigation, generate timely revenue for the Government and benefit taxpayers by providing them peace of mind, certainty and savings on account of time and resources that would otherwise be spent on the long-drawn and vexatious litigation process.

2. The commencement date of the said Scheme has already been notified as 1.10.2024. Further, Rules and Forms for enabling the Scheme have also been notified on 20.09.2024. After enactment of the DTVSV Scheme, 2024, several queries were received from the stake-holders seeking guidance in respect of various provisions contained therein.

3. Accordingly, under Section 97 of the DTVSV Scheme, 2024 which empowers the Board to issue directions or instructions in public interest, following Guidance Note in the form of answers to the frequently asked questions (FAQs) is hereby issued. This will be helpful for the tax-payers for creating better awareness and understanding with respect to the provisions of the Scheme.

**[For further details please refer the Circular]**

# GST

## CIRCULAR

### CLARIFICATION OF VARIOUS DOUBTS RELATED TO SECTION 128A OF THE CGST ACT, 2017

**OUR COMMENTS:** The Central Board of Indirect Taxes vide circular no. 238/32/2024-GST dated 15.10.2024 clarified that 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 CGST 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 re-determining 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,

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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.

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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



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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,



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(a) in cases, where the taxpayer prefers an appeal against the said rejection order, and the appellate authority holds that the proper officer has rightly 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 benefit of waiver of interest or penalty or both provided under Section 128A, are also clarified hereby:

S. No.	Issue	Clarification
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

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		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.			covered under the said section.
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.			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.
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			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?			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	

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	<p>If so, what is the tax amount payable for claiming waiver under Section 128A?</p>	<p>of interest or penalty or both under Section 128A.</p> <p>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.</p> <p>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.</p> <p>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.</p>	8	<p>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?</p>	<p>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.</p> <p>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.</p> <p>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.</p>
			9	<p>Sub-section (3) of section 128A refers to only appeal or writ petition.</p> <p>In this regard, whether matters where SLP filed</p>	<p>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</p>

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	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?	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.			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.
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.	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.
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 (3) 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.	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.

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		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.			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.
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.			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.
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 may be, before submitting the application. While calculating the amount deductible on account of not being payable in accordance			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-			Yes.	In cases where order in FORM GST DRC-07, FORM GST DRC-08 or FORM GST APL-04, as the case may be,



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03, whether they 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?	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.
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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.

**[For further details please refer the Circular]**

## CIRCULAR

### CLARIFYING THE ISSUES REGARDING IMPLEMENTATION OF PROVISIONS OF SUB-SECTION (5) AND SUB-SECTION (6) IN SECTION 16 OF CGST ACT, 2017

**OUR COMMENTS:** The Central Board of Indirect Taxes vide circular no. 237/31/2024-GST dated 15.10.2024 clarified that 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 persons 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 avilment 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

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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

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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](http://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.

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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.

[For further details please refer the Circular]

## ADVISORY

### HARD - LOCKING OF AUTO-POPULATED LIABILITY IN GSTR-3B

**OUR COMMENTS:** 1. GSTN vide advisory dated 17.10.2024 advised that 1. In order to assist taxpayers in filing their returns and minimizing human errors, GSTN has continuously improving the GST return filing process and in this endeavor

the GST Portal now provides a pre-filled GSTR-3B form, where the tax liability is auto-populated from the declared supplies in GSTR-1/ GSTR-1A/ IFF by the supplier, while the Input Tax Credit (ITC) is auto-populated from GSTR-2B. A detailed system generated pdf of the auto populated GSTR-3B is also provided to all the taxpayers.

2. Now, taxpayers also have a facility to amend their incorrectly declared outward supplies in GSTR-1/IFF through GSTR-1A, allowing them an opportunity to correct their liabilities before filing their GSTR-3B. Additionally, to manage inward supplies and ensure accurate ITC claims in GSTR-3B, taxpayers have the option to take informed actions of accept/reject/pending on inward supplies via the Invoice Management System (IMS) which is now available to the taxpayers.

3. It may be noted that tentatively from January 2025 tax period, the GST Portal is going to restrict making changes in auto-populated liability in pre-filled GSTR-3B from GSTR-1/1A/IFF to further enhance accuracy in return filing. It is once again suggested hereby that in case any change is required in auto-populated liability, the same may please be handled through GSTR-1A.

4. However, locking of auto-populated ITC in GSTR-3B, after the roll out of IMS, will be implemented from a later date. For the same a separate advisory would be issued after addressing all the issues related to IMS, raised by the trade.

[For further details please refer the detailed advisory]

## ADVISORY

### IMPORTANT ADVISORY FOR GSTR-9/9C

**OUR COMMENTS:** 1. GSTN vide advisory dated 15.10.2024 advised that starting FY 2023-24, GST system will auto-populate eligible ITC for domestic supplies (excluding reverse charge and imports ITC) from table 3(I) of GSTR-2B to table 8A of GSTR-9. These changes in GSTR-9 and 9C for the FY 2023-24 will be available on the GST portal from today i.e., 15th October 2024 onwards. Further, a validation utility will be executed progressively (for validation by taxpayers) to complete the auto population of GSTR-9 from GSTR-2B for Apr-23 till Mar-24.

[For further details please refer the detailed advisory]



# FEMA

## CASE LAW

**S. MAJITHA BANU, Y. SHAHUL HAMEED VERSUS THE ASSISTANT DIRECTOR, DIRECTORATE OF ENFORCEMENT, MADURAI., THE BANK OF INDIA, REP. BY ITS MANAGER, VANI BRANCH: MADRAS HIGH COURT**

**OUR COMMENTS:** Adjudication Order imposing penalties under FEMA - Writ of Mandamus directing the respondent to foreclose the fixed deposit opened by the first respondent out of the money of the petitioners and direct the second respondent Bank, to release the money in favour of the petitioners – It has been held that at the time when the proceedings were pending against the petitioners before the Adjudicating Authority under Section 3 of the Foreign Exchange Management Act, 1999, the Accounts of the petitioners, in which, Fixed Deposit were made by them, were ordered to be freezed by the first respondent and the amounts were transferred to the account of the first respondent.

Since the proceedings against the petitioners have been dropped vide the aforesaid Adjudication Order, we see no impediment in allowing this Writ Petition. The respondents are directed to take steps to release the amount in the Fixed Deposits to the petitioners, in accordance with the aforementioned Adjudication Order, as expeditiously as possible. WP allowed.



# CUSTOMS

## NOTIFICATION

### FIXATION OF TARIFF VALUE OF EDIBLE OILS, BRASS SCRAP, ARECA NUT, GOLD AND SILVER

**OUR COMMENTS:** The Ministry of Finance, Department of Revenue vide Notification No. 66/2024-Customs (N.T.) dated 15.10.2024 notified that in exercise of the powers conferred by sub-section (2) of section 14 of the Customs Act, 1962 (52 of 1962), the Central Board of Indirect Taxes & Customs, being satisfied that it is necessary and expedient to do so, hereby makes the following amendments in the notification of the Government of India in the Ministry of Finance (Department of Revenue), No. 36/2001-Customs (N.T.), dated the 3rd August, 2001, published in the Gazette of India, Extraordinary, Part-II, Section-3, Sub-section (ii), vide number S. O. 748 (E), dated the 3rd August, 2001, namely:-

In the said notification, for TABLE-1, TABLE-2, and TABLE-3 the following Tables shall be substituted, namely: -

**"TABLE-1**

Sl. No.	Chapter/ heading/ subheading/tariff item	Description of goods	Tariff value (US \$Per Metric Tonne)
(1)	(2)	(3)	(4)
1	1511 10 00	Crude Palm Oil	1008
2	1511 90 10	RBD Palm Oil	1019
3	1511 90 90	Others – Palm Oil	1014
4	1511 10 00	Crude Palmolein	1024
5	1511 90 20	RBD Palmolein	1027
6	1511 90 90	Others – Palmolein	1026
7	1507 10 00	Crude Soya bean Oil	1025
8	7404 00 22	Brass Scrap (all grades)	5626

**TABLE-2**

Sl. No.	Chapter/ heading/ sub-heading/tariff item	Description of goods	Tariff value (US \$)
(1)	(2)	(3)	(4)
1.	71 or 98	Gold, in any form, in respect of which the benefit of entries at serial	855 per 10 grams

		number 356 of the Notification No. 50/2017-Customs dated 30.06.2017 is availed	
2.	71 or 98	Silver, in any form, in respect of which the benefit of entries at serial number 357 of the Notification No. 50/2017-Customs dated 30.06.2017 is availed	1016 per kilogram
3.	71	<p>(i) Silver, in any form, other than medallions and silver coins having silver content not below 99.9% or semi-manufactured forms of silver falling under sub-heading 7106 92;</p> <p>(ii) Medallions and silver coins having silver content not below 99.9% or semi-manufactured forms of silver falling under sub-heading 7106 92, other than imports of such goods through post, courier or baggage.</p> <p><b>Explanation.</b> - For the purposes of this entry, silver in any form shall not include foreign currency coins, jewellery made of silver or articles made of silver.</p>	1016 per kilogram
4.	71	<p>(i) Gold bars, other than tola bars, bearing manufacturers or refiner's engraved serial number and weight expressed in metric units;</p> <p>(ii) Gold coins having gold content not below 99.5% and gold findings, other than imports of such goods through post, courier or baggage.</p>	855 per 10 grams

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**Explanation.** - For the purposes of this entry, "gold findings" means a small component such as hook, clasp, clamp, pin, catch, screw back used to hold the whole or a part of a piece of Jewellery in place.

**TABLE-3**

Sl. No.	Chapter/ heading/ sub-heading/tariff item	Description of goods	Tariff value (US \$ Per Metric Ton)
(1)	(2)	(3)	(4)
1	080280	Areca nuts	6552"

2. This notification shall come into force with effect from the 16th day of October, 2024.

**[For further details please refer the notification]**

## INSTRUCTION

**IMPLEMENTATION OF "AGREEMENT" SIGNED BETWEEN FSSAI, MINISTRY OF HEALTH AND FAMILY WELFARE, GOVERNMENT OF INDIA AND BHUTAN FOOD AND DRUG AUTHORITY (BFDA)**

**OUR COMMENTS:** The Ministry of Finance, Department of Revenue vide instruction no. 22/2024- Customs dated 16.10.2024 instructed that reference is invited to FSSAI Office Order dated 13.09.2024 issued from File No: TIC/1/2024-IMPORTS-FSSAI (copy attached as Annexure A) on the above subject.

2.1 Vide above order, it is stated that an "Agreement" has been signed between FSSAI, Ministry of Health and Family Welfare, Government of India and Bhutan Food and Drug Authority (BFDA), Ministry of Health, Royal Govt. of Bhutan, at Thimphu on 21 March, 2024. The Agreement aims to recognize the official control exercised by BFDA on Food Business Operators (FBOs) as equivalent to FSSAI's requirement and the BFDA shall issue a Health Certificate as proof of compliance with the requirements prescribed by FSSAI, for export of food products to India.

2.2 It is further stated that, for compliance and smooth implementation of the above said agreement, all the

concerned officers shall ensure the compliance of following requirements:

i. If the Imported food consignment from the Bhutanese manufacturer with the scope of approval as per the list attached as Annexure B, is accompanied with the prescribed Health Certificate, attached as Annexure C, duly issued by the BFDA Competent Authority, then NOC may be given to the consignment based on the duly compliant accompanied Health Certificate.

3. Specimen signatures of the Authorized signatories issuing the Health Certificate are being shared separately for reference and records.

4. In case of imported food consignments covered under the scope of aforesaid 'Agreement', the requisite Health Certificate shall be mandatorily uploaded on e-sanchit by the importer/Customs Broker under document code 8511FS and the particulars of the Health Certificate shall be carefully entered while filing the bill of entry. The out-of-charge officer/TSK officer shall verify the Health Certificate as per practice being followed for verification of such documents. In cases, where Customs Officers are functioning as Authorised Officers of FSSAI, they shall ensure, before granting NOC, that requisite documents as stated above are uploaded on e-sanchit and are in order.

5. It is requested that necessary action may be taken to sensitize officers under your jurisdiction regarding the said matter.

6. The difficulties, if any, may be brought to the notice of the Board.

**[For further details please refer the instruction]**

## INSTRUCTION

**RETROSPECTIVE ISSUANCE OF CERTIFICATES OF ORIGIN UNDER INDIA-UAE CEPA**

**OUR COMMENTS:** The Ministry of Finance, Department of Revenue vide instruction no. 21/2024- Customs dated 16.10.2024 instructed that Board is in receipt of trade representations citing implementation challenges being faced under the India-UAE CEPA. The issue primarily pertains to non-acceptance of retrospectively issued certificates of origin during finalisation of provisional assessment and, consequent denial of preferential benefit under the CEPA. While procedural discrepancies such as non-marking of 'ISSUED RETROSPECTIVELY' column by the issuing authority and non-

# CUSTOMS

uploading of certificate of origin on e-Sanchit are cited as ground for rejection of claim, a substantive issue that section 149 of the Customs Act do not allow amendment in bill of entry after out-of-charge has also been raised.

2. The matter has been examined vis-a-vis the extant legal provisions. including the rules of origin issued under India-UAE CEPA vide Notification 39/2022-Cus (N.T.) dated 30.04.2022. The said rules inter alia govern the procedure of issuing Certificates of Origin (COOS) by the concerned authorities of India and UAE.

2.1 Rule 15(11) of the said rules explicitly permits the retrospective issuance of COO, under exceptional situations:

(11) The Certificate of Origin shall be issued prior to, at or within a period of five working days of the date of exportation. However, under exceptional cases, where a Certificate of Origin has not been issued at the time of exportation or within five working days from the date of shipment due to involuntary errors or omissions, or any other valid reasons, the Certificate of Origin may be issued retrospectively, bearing the words "ISSUED RETROSPECTIVELY" in box 9 of the Certificate of Origin, with the issuing authority also recording the reasons in writing on the exceptional circumstances due to which the certificate was issued retrospectively. The Certificate of Origin can be issued retrospectively but no longer than twelve months from the date of shipment.

2.2 Further, rule 21(3) provides for claiming of refund of excess duties paid in cases where a product would have qualified as an originating product when it was imported into the territory, but preferential treatment was not extended at the time of import:

(3) Each Party shall, in accordance with its laws, provide that where a product would have qualified as an originating product when it was imported into the territory of that Party, the importer of the product may, within a period specified by the laws of the importing Party, apply for a refund of any excess duties paid as a result of the product not having been accorded preferential treatment.

2.3 These provisions indicate that where preferential treatment was not claimed or extended at the time of import, the importer does not lose the right to claim the benefit upon subsequent submission of a valid COO within stipulated time frame, provided that authenticity of COO and product origin are not disputed. The requirement of uploading COO on e-Sanchit while filing bill of entry would not apply in this case, as the COO has been issued after the date of importation. A

harmonious reading of the provisions is required so that the legal entitlement under the trade agreement is not nullified.

3. Further, rule 15 (13) of the said rules provides that minor discrepancies, including typing or formatting errors, shall not render a COO invalid, provided the certificate corresponds to the products under import and such minor errors do not affect the authenticity of the COO or the accuracy of the information contained therein. In nutshell, minor procedural discrepancies concerning rules of origin should not be seen as countering the intent of extending substantive benefit under trade agreement, unless such discrepancies cast a doubt on the originating status of the product.

4. It is requested that Customs formations under your jurisdiction may be suitably sensitized.

**[For further details please refer the instruction]**

# DGFT

## TRADE NOTICE

### ELECTRONIC SUBMISSION OF APPENDIX 4H CERTIFICATES

**OUR COMMENTS:** The Ministry of Commerce and Industry vide notification no. 21/2024-25 dated 17.10.2024 notified with reference to the above subject and Paragraph 1.04 (f) of the Handbook of Procedures, an electronic system has been introduced to facilitate the uploading of digitally signed documents by Certifying Authorities (e.g., Chartered Accountants, Company Secretaries, Cost Accountants, Chartered Engineers, etc.). This system allows exporters to seamlessly integrate these digitally uploaded annexures with their online applications across various schemes under the Foreign Trade Policy (FTP).

2. In this reference, it is informed that the DGFT has launched an online facility for onboarding of Certifying Authorities. These authorities can now digitally sign and submit certificates using their online DGFT accounts. As a result, the digitalization of the Appendix 4H certificate, which accounts for the consumption and stock of duty-free imported or domestically sourced raw materials and components under the Advance Authorization and DFIA schemes, has been fully implemented online. The following information is provided for the consideration of all relevant stakeholders.

**3. Workflow:** The system workflows are summarised as follows:

#### Exporter's workflow:

i. Exporters can fill in the required information as per the Appendix 4H format through the DGFT website (<https://dgft.gov.in>) while applying for Advance Authorisation (AA) redemption or while applying for a DFIA Transferable Scrip.

ii. Exporters can forward the draft Appendix 4H form to the registered certifying authority online by entering their registration number.

iii. The certifying authority shall verify the details, update them as needed, and digitally sign the document using Aadhaar e-sign or a Digital Signature Token. The system then automatically generates the Appendix 4H certificate.

iv. This signed certificate is automatically attached to the AA/DFIA redemption application, facilitating verification of the exporter's actual consumption.

v. The IEC holder may thereafter submit the AA/DFIA redemption application online to the DGFT RA.

vi. Exporters can track and download the digitally signed Appendix 4H certificate by accessing the "Repository" and selecting "View Submitted/Approved Certificates"

vii. Drafts submitted to the Certifying Authority shall also be shown here but shall remain inactive, for any further action by the exporter.

viii. The digitally signed Appendix 4H certificate shall also be accessible to the DGFT RA.

#### Certifying Authority Workflow:

i. The Certifying Authority registers with DGFT by choosing the category 'Certifying Authority' on the Registration page and providing their membership details.

ii. The Certifying Authority can monitor and manage draft exporters' certificates by accessing the repository under 'View Submitted/Approved Certificates'

iii. The Certifying Authority may modify details in the draft certificate as necessary.

iv. Upon review, the Certifying Authority can either approve and sign the Appendix 4H certificate using a Digital Signature Certificate (DSC) or reject the application based on their assessment.

**4. User Guide & FAQs:** A user guide and a set of Frequently Asked Questions (FAQs) have been published on the DGFT website under the 'Learn' section. Furthermore, outreach programs will be organized in collaboration with Institute(s) of Certifying Authorities and DGFT RAs to enhance familiarity with these processes.

**5. Support Channels:** Exporters and stakeholders may contact the DGFT Helpdesk for assistance, suggestions, or feedback through the following channels:

i. Call the Toll-Free Helpdesk Support Number.

ii. Raise a Helpdesk ticket by navigating to the DGFT website -- > Services -- > DGFT Helpdesk Service. Users can also track the status of their previously filed tickets or search for past tickets.

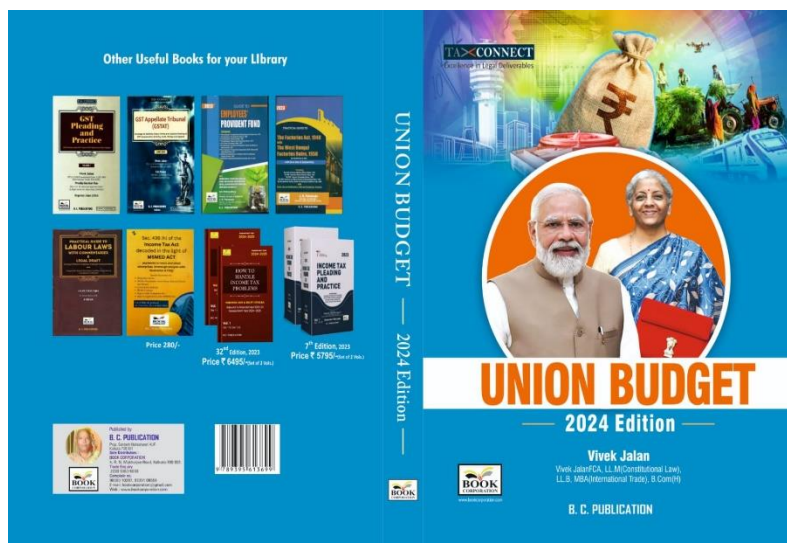
iii. Email queries to [dgftedi@nic.in](mailto:dgftedi@nic.in)

This Trade Notice is issued with the approval of the competent authority.

**[For further details please refer the Trade Notice]**

## :IN STANDS

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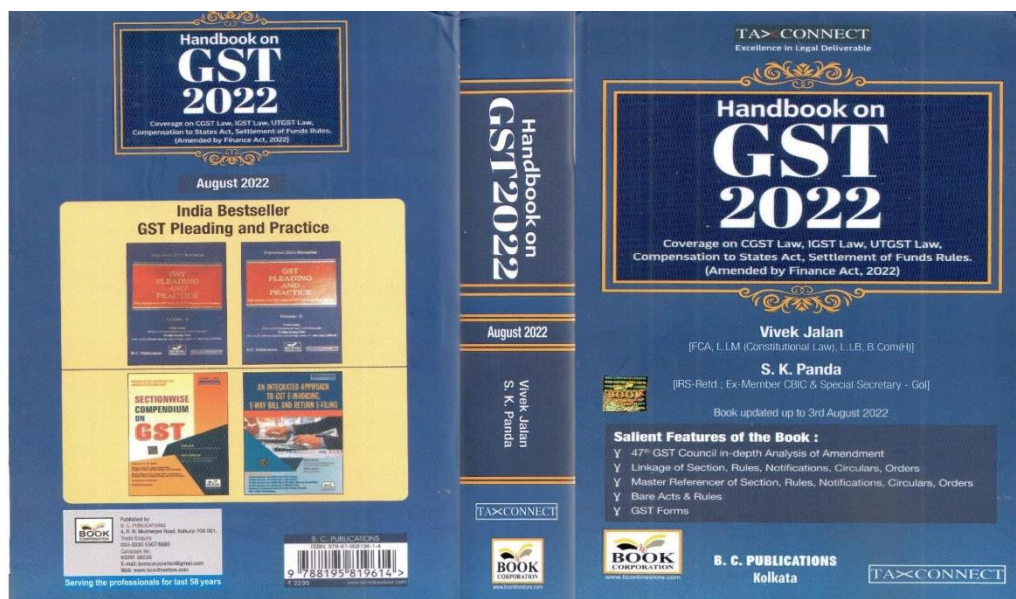
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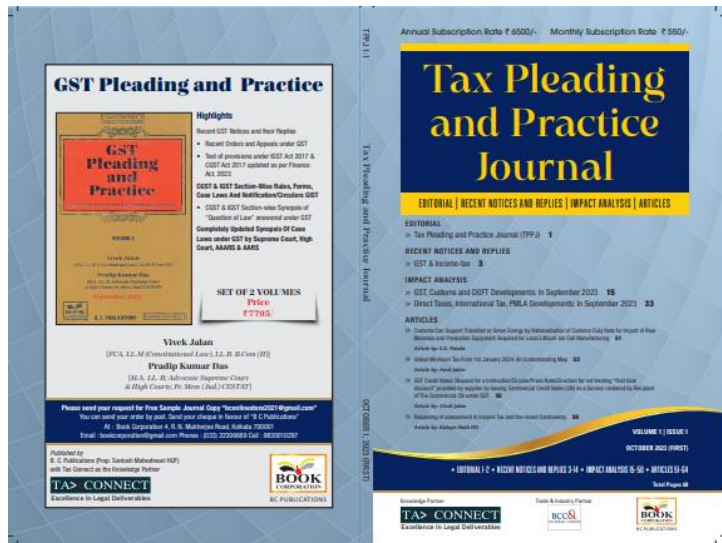
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