



The Institute of Chartered Accountants of India

GST & Indirect Taxes Committee

GOODS & SERVICES TAX UPDATE-245

Clarification of the issues regarding implementation of provisions of sub-section (5) and sub-section (6) in section 16 of CGST Act, 2017

The various issues have been clarified pertaining to availment of benefit of the amendments made in section 16 of CGST Act by the taxpayers against whom demands have been issued alleging wrong availment of input tax credit (ITC) in contravention of provisions of section 16(4) of CGST Act, who are now entitled to avail the said ITC as per the retrospectively inserted provisions of sub-section (5) or sub-section (6) of section 16 w.e.f. 01.07.2017.

The following action may be taken by the tax authorities and/or the taxpayers in various scenarios for availment of said benefit:

S. No.	Scenario	Action to be taken by the Proper Officer
1.	Where any investigation/proceedings in respect of wrong availment of ITC under section 16(4) has been initiated but no demand notice/statement under section 73 or section 74 has been issued and taxpayers are now entitled to avail the said ITC under sub-section (5) or sub-section (6) of section 16	The proper officer shall take cognizance of the sub-section (5) or sub-section (6) of section 16, inserted retrospectively with effect from 01.07.2017 and take further appropriate action. This shall also include the cases where an intimation in FORM DRC-01A has been issued under rule 142(1A) of the CGST Rules for denial of ITC on account of contravention of section 16(4) but no demand notice/statement under section 73 or section 74 has been issued.
2.	Where demand notice/ statement under section 73 or section 74 has been issued but no order under section 73 or section 74 has been issued by the Adjudicating Authority	The Adjudicating Authority shall take cognizance of sub-section (5) or sub-section (6) of section 16, inserted retrospectively with effect from 01.07.2017 and pass appropriate order under section 73 or section 74.
3.	Where order under section 73 or	The Appellate Authority shall take

	section 74 has been issued and appeal has been filed under section 107 with the Appellate Authority but no order under section 107 has been issued by the Appellate Authority	cognizance of sub-section (5) or sub-section (6) of section 16 retrospectively with effect from 01.07.2017 and pass appropriate order under section 107.
4.	Where order under section 73 or section 74 has been issued and Revisional Authority has initiated proceedings under section 108 but no order under section 108 has been issued by the Revisional Authority	The Revisional Authority shall take cognizance of sub-section (5) or sub-section (6) of section 16 inserted retrospectively with effect from 01.07.2017 and pass appropriate order under section 108.
5.	Where order under section 73 or section 74 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 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	The concerned taxpayer may apply for rectification of such order under the special procedure under section 148 notified vide <i>Notification No. 22/2024 – Central Tax dated 08.10.2024</i> , within a period of 6 months from the date of issuance of the said notification.

The procedure of electronic filing of rectification application in various cases has been set out in the said Circular.

While taking a decision on rectification application filed under the said special procedure, the proper officer shall also consider other grounds, if any, for denial of ITC, other than contravention of section 16(4), invoked in the concerned notice issued under section 73 or section 74, as applicable, in respect of the said amount of ITC.

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 a rectified order can be filed under the provisions of section 107 or section 112, as the case may be, within the time limit specified therein.

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 ITC already reversed would be available, where such tax has been paid or ITC has been reversed on account of contravention of provisions of sub-section (4) of section 16 and where such ITC is now available as per the provisions of sub-section (5) or sub-section (6) of section 16.

In cases where the issue relating to wrongful availment of ITC on account of contravention of provisions of section 16(4) and such ITC becoming available now as per 16(5) & (6), is not involved and a taxpayer wishes to file an application for the rectification of an order,

such rectification application can be filed by the taxpayers only under the provisions of section 161. In case a taxpayer has filed a rectification application under the special procedure notified vide *Notification No. 22/2024 –Central tax dated 08.10.2024* but it is found that the issues in the said order do not involve any issue of wrong availment of ITC on account of contravention of provisions of section 16(4) and such ITC becoming available now as per 16(5) & (6), such an application would be summarily rejected by the proper officer.

***Vice – Chairman
GST & Indirect Taxes Committee***

***Chairman
GST & Indirect Taxes Committee***

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