

Clarification of issues regarding implementation of sections 16(4) and 16(5) of the CGST Act, 2017 [Circular No. 237/31/2024-GST]

- The Central Board of Indirect Taxes and Customs (CBIC) has issued clarifications regarding sections 16(5) or 16(6) of the Central Goods and Services Tax Act, 2017 (CGST Act), which were amended and made effective July 1, 2017 and retrospectively extends the time limit for availing Input Tax Credit (ITC) in specific cases. Section 150 of the Finance Act, 2024 states that no refunds of tax paid or input tax credit reversed will be granted due to the retrospective amendments in sections 16(5) and 16(6) of the CGST Act. Additionally, Notification No. 22/2024 establishes a special procedure for rectifying orders related to wrong ITC claims under sections 73, 74, 107, or 108, applicable to taxpayers now eligible for ITC under the amended provisions. The Board aims to provide clarity on these issues to ensure uniform implementation.
- Tax authorities and taxpayers can take specific actions regarding the retrospective provisions of sections 16(5) and 16(6) of the CGST Act:
 1. No Demand Notice Issued: If investigations into wrong ITC claims have begun but no demand notice under Sections 73 or 74 has been issued, taxpayers can still avail ITC under sections 16(5) or 16(6) of the CGST Act. This includes cases where an intimation in FORM DRC-01A has been issued to deny ITC for alleged contraventions of section 16(4), provided no demand notice has been issued.
 2. Demand Notice Issued, but no Order is issued: If a demand notice has been issued but no order is made by the Adjudicating Authority under sections 73 or 74, that authority must consider the retrospective provisions and issue an appropriate order.
 3. Order has been issued and an appeal is pending under section 107, but no order has been made by the Appellate Authority: The Appellate Authority must recognize the retrospectively implemented sections 16(5) or 16(6) of the CGST Act, and issue the appropriate order under section 107.
 4. Order has been issued and proceedings are initiated under section 108, but no order has been issued by the Revisional Authority: The Revisional Authority shall consider the retrospectively implemented sections 16(5) or 16(6) of the CGST Act, and issue an appropriate order under section 108.

5. Order has been issued but no appeal has been filed against an order under sections 73 or 74 or no appeal has been filed against an order under sections 107 or 108: In cases where an order under sections 73, 74, 107, or 108 of the CGST Act confirms a demand for wrongly availed input tax credit due to a violation of section 16(4), but such credit is now available under sections 16(5) or 16(6), and no appeal has been filed, the taxpayer may apply for rectification under section 148 as per Notification No. 22/2024 dated 08.10.2024, within six months of the notification's issuance.
- Taxpayers can file an electronic application for rectification of orders under sections 73, 74, 107, or 108 of the CGST Act on the GST portal. The process varies by section. While filing such application for rectification of order, taxpayers must upload a proforma (Annexure A) detailing the confirmed demand for wrongly availed input tax credit. The proper officer will decide on the application within three months and issue an order. If the rectification adversely affects the taxpayer, natural justice principles will apply. An appeal can be filed against any rectified order under sections 107 or 112 within the specified time limits.
 - Refunds of tax paid or input tax credit reversed due to violations of section 16(4) of the CGST Act will not be granted, even if such credit is now available under sections 16(5) or 16(6), per section 150 of the Finance, 2024.
 - Rectification applications for orders under sections 73, 74, 107, or 108 can be submitted within six months of Notification No. 22/2024, but only if they involve the wrongful availing of input tax credit due to section 16(4). If the application does not meet these criteria, it will be rejected with a note stating that it falls outside the notification's scope.

Disclaimer: The information contained herein is of a general nature and is not intended to address the circumstances of any particular individual or entity. This note provides general information existing at the time of preparation. We request that none should act on such information without examination of the particular situation and professional advice.

