

Sl. No.	Issue	Clarification
3.	In the case given in Sl. No. 1, whether the recipient of service of transportation of goods would be eligible to avail input tax credit in respect of the said input service of transportation of goods?	<p>Section 16 of the CGST Act lays down the eligibility and conditions for taking input tax credit whereas, section 17 of the CGST Act provides for apportionment of credit and blocked credits under circumstances specified therein. The said provisions of law do not restrict availment of input tax credit by the recipient located in India if the place of supply of the said input service is outside India. Thus, the recipient of service of transportation of goods shall be eligible to avail input tax credit in respect of the IGST so charged by the supplier, subject to the fulfilment of other conditions laid down in section 16 and 17 of the CGST Act.</p> <p>In the illustration given in Sl. No. 1 above, X would be eligible to take input tax credit of IGST in respect of supply of services received by him from Z, subject to the fulfilment of other conditions laid down in section 16 and 17 of the CGST Act.</p>
4.	In the case mentioned at Sl. No. 1, what state code has to be mentioned by the supplier of the said service of transportation of goods, where the transportation of goods is to a place outside India, while reporting the said supply in <b>FORM GSTR-1</b> ?	The supplier of service shall report place of supply of such service by selecting State code as '96-Foreign Country' from the list of codes in the drop-down menu available on the portal in <b>FORM GSTR-1</b> .

## 185

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

**Circular No. 185/17/2022-GST**

**27<sup>th</sup> December, 2022**

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



the proper officer shall determine the tax payable by the noticee, deeming as if the notice was issued under sub-section (1) of section 73.

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

3. In order to clarify the issue and to ensure uniformity in the implementation of the provisions of law across the field formations, the Board, in exercise of its powers conferred by section 168(1) of the CGST Act, hereby clarifies the issues as under:

S.No.	Issue	Clarification
1.	In some of the cases where the show cause notice has been issued by the proper officer to a noticee under sub-section (1) of section 74 of CGST Act for demand of tax not paid/ short paid or erroneous refund or input tax credit wrongly availed or utilized, the appellate authority or appellate tribunal or the court concludes that the said notice is not sustainable under sub-section (1) of section 74 of CGST Act for the reason that the charges of fraud or any willful-misstatement or suppression of facts to evade tax have not been established against the noticee and directs the proper officer to re-determine the amount of tax payable by the noticee, deeming the notice to have been issued under sub-section (1) of section 73 of CGST Act, in accordance with the provisions of sub-section (2) of section 75 of CGST Act. What would be the time period for re-determination of the tax, interest and penalty payable by the noticee in such cases?	<ul style="list-style-type: none"> <li>• Sub-section (3) of section 75 of CGST Act provides that an order, required to be issued in pursuance of the directions of the appellate authority or appellate tribunal or the court, has to be issued within two years from the date of communication of the said direction.</li> <li>• Accordingly, in cases where any direction is issued by the appellate authority or appellate tribunal or the court to re-determine the amount of tax payable by the noticee by deeming the notice to have been issued under sub-section (1) of section 73 of CGST Act in accordance with the provisions of sub-section (2) of section 75 of the said Act, the proper officer is required to issue the order of redetermination of tax, interest and penalty payable within the time limit as specified in under sub-section (3) of section 75 of the said Act, i.e. <b>within a period of two years from the date of communication of the said direction by appellate authority or appellate tribunal or the court, as the case may be.</b></li> </ul>



S.No.	Issue	Clarification
2.	How the amount payable by the noticee, deeming the notice to have been issued under sub-section (1) of section 73, shall be re-computed/ re-determined by the proper officer as per provisions of sub-section (2) of section 75?	<ul style="list-style-type: none"> <li>• In cases where the amount of tax, interest and penalty payable by the noticee is required to be re-determined by the proper officer in terms of sub-section (2) of section 75 of CGST Act, the demand would have to be re-determined keeping in consideration the provisions of sub-section (2) of section 73, read with sub-section (10) of section 73 of CGST Act.</li> <li>• <b>Sub-section (1) of section 73</b> of CGST Act provides for issuance of a show cause notice by the proper officer for tax not paid or short paid or erroneously refunded, or where input tax credit has been wrongly availed or utilized, in cases which do not involve fraud or willful misstatement or suppression of facts to evade tax. <b>Sub-section (2) of section 73</b> of CGST Act provides that such show cause notice shall <b>be issued at least 3 months prior</b> to the time limit specified in sub-section 10 of section 73 for issuance of order. As per <b>sub-section (9) of section 73</b> of CGST Act, the proper officer is required to determine the tax, interest and penalty due from the noticee and issue an order. As per <b>sub-section (10) of section 73</b> of CGST Act, an order under sub-section (9) of section 73 has to be issued by the proper officer <b>within three years</b> from the due date for furnishing of annual return for the financial year in respect of which tax has not been paid or short paid or input tax credit has been wrongly availed or utilized or from the date of erroneous refund.</li> <li>• It transpires from a combined reading of these provisions that in cases which do not involve fraud or willful-misstatement or suppression of facts to evade payment of tax, the show cause notice in terms of</li> </ul>



S.No.	Issue	Clarification
		<p>sub-section (1) of section 73 of CGST Act has to be issued within <b>2 years and 9 months</b> from the <b>due date of furnishing of annual return</b> for the financial year to which such tax not paid or short paid or input tax credit wrongly availed or utilized relates, or within <b>2 years and 9 months</b> from the <b>date of erroneous refund</b>.</p> <ul style="list-style-type: none"> <li>• Therefore, in cases where the proper officer has to re-determine the amount of tax, interest and penalty payable deeming the notice to have been issued under sub-section (1) of section 73 of CGST Act in terms of sub-section (2) of section 75 of the said Act, the same can be re-determined for so much amount of tax short paid or not paid, or input tax credit wrongly availed or utilized or that of erroneous refund, in respect of which <b>show cause notice was issued within the time limit as specified under sub-section (2) of section 73 read with sub-section (10) of section 73 of CGST Act</b>. Thus, only the amount of tax short paid or not paid, or input tax credit wrongly availed or utilized, along with interest and penalty payable, in terms of section 73 of CGST Act relating to such financial years can be re-determined, <b>where show cause notice was issued within 2 years and 9 months from the due date of furnishing of annual return for the respective financial year</b>. Similarly, the amount of tax payable on account of erroneous refund along with interest and penalty payable can be re-determined only <b>where show cause notice was issued within 2 years and 9 months from the date of erroneous refund</b>.</li> </ul>



S.No.	Issue	Clarification
		<ul style="list-style-type: none"> <li>• In case, where the show cause notice under sub-section (1) of section 74 was issued for tax short paid or tax not paid or wrongly availed or utilized input tax credit beyond a period of 2 years and 9 months from the due date of furnishing of the annual return for the financial year to which such demand relates to, and the appellate authority concludes that the notice is not sustainable under sub-section (1) of section 74 of CGST Act thereby deeming the notice to have been issued under sub-section (1) of section 73, the entire proceeding shall have to be dropped, being hit by the limitation of time as specified in section 73. Similarly, where show cause notice under sub-section (1) of section 74 of CGST Act was issued for erroneous refund beyond a period of 2 years and 9 months from the date of erroneous refund, the entire proceeding shall have to be dropped.</li> <li>• In cases, where the show cause in terms of sub-section (1) of section 74 of CGST Act was issued for tax short paid or not paid tax or wrongly availed or utilized input tax credit or on account of erroneous refund within 2 years and 9 months from the due date of furnishing of the annual return for the said financial year, to which such demand relates to, or from the date of erroneous refund, as the case may be, the entire amount of the said demand in the show cause notice would be covered under re-determined amount.</li> <li>• Where the show cause notice under sub-section (1) of section 74 was issued for multiple financial years, and where notice had been issued before the expiry of the time period as per sub-section (2) of section 73 for one financial year but after the expiry of the said due date</li> </ul>



S.No.	Issue	Clarification
		for the other financial years, then the amount payable in terms of section 73 shall be re-determined only in respect of that financial year for which show cause notice was issued before the expiry of the time period as specified in sub-section (2) of section 73.

## 186

### Clarification on various issue pertaining to GST-reg.

**Circular No. 186/18/2022-GST**

**27th December, 2022**

Representations have been received from the field formations seeking clarification on certain issues with respect to –

- i. taxability of No Claim Bonus offered by Insurance companies;
- ii. applicability of e-invoicing w.r.t an entity.

2. In order to clarify the issue and to ensure uniformity in the implementation of the provisions of law across the field formations, the Board, in exercise of its powers conferred by section 168 (1) of the Central Goods and Services Tax Act, 2017 (hereinafter referred to as "CGST Act"), hereby clarifies the issues as under:

S. No.	Issue	Clarification
<b>Taxability of No Claim Bonus offered by Insurance companies</b>		
1.	Whether the deduction on account of No Claim Bonus allowed by the insurance company from the insurance premium payable by the insured, can be considered as consideration for the supply provided by the insured to the insurance company, for agreeing to the obligation to refrain from the act of lodging insurance claim during the previous year(s)?	<p>As per practice prevailing in the insurance sector, the insurance companies deduct No Claim Bonus from the gross insurance premium amount, when no claim is made by the insured person during the previous insurance period(s). The customer/insured procures insurance policy to indemnify himself from any loss/ injury as per the terms of the policy, and is not under any contractual obligation not to claim insurance claim during any period covered under the policy, in lieu of No Claim Bonus.</p> <p>It is, therefore, <b>clarified</b> that there is no supply provided by the insured to the insurance company in form of agreeing to the obligation to refrain from the act of lodging insurance claim during the previous year(s) and No Claim Bonus cannot be considered as a consideration for any supply provided by the insured to the insurance company.</p>