Circular No. 42/16/2018-GST

CBEC-20/16/03/2017-GST
Government of India
Ministry of Finance
Department of Revenue
Central Board of Indirect Taxes and Customs
GST Policy Wing
****

New Delhi, Dated the 13th April, 2018

To
The Principal Chief Commissioners/Chief Commissioners/ Principal Commissioners/ Commissioner of Central Tax (All) / The Principal Directors General/ Directors General (All)

Sub: Clarification regarding procedure for recovery of arrears under the existing law and reversal of inadmissible input tax credit-reg.

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Madam/ Sir,

Kind attention is invited to the provisions of the Central Goods and Services Tax Act, 2017 (hereinafter referred to as the CGST Act) relating to the recovery of arrears of central excise duty /service tax and CENVAT credit thereof, CENVAT credit carried forward erroneously and related interest, penalty or late fee payable arising as a result of the proceedings of assessment, adjudication, appeal etc. initiated before, on or after the appointed date under the provisions of the existing law. In this regard, representations have been received seeking clarification on the procedure for recovery of such arrears in the GST regime.

2. The issues have been examined and to ensure uniformity in the implementation of the provisions of the law across the field formations, the Board, in exercise of its powers conferred under section 168 (1) of the Central Goods and Services Tax Act, 2017, (hereinafter referred to as the "CGST Act") hereby specifies the procedure to be followed for recovery of arrears arising out of proceedings under the existing law.

3. **Legal provisions relating to the recovery of arrears of central excise duty and service tax and CENVAT credit thereof arising out of proceedings under the existing law (Central Excise Act, 1944 and Chapter V of the Finance Act, 1994)**

i) **Recovery of arrears of wrongly availed CENVAT Credit:**

In case where any proceeding of appeal, review or reference relating to a claim for CENVAT credit had been initiated, whether before, on or after the appointed day, under the existing law, any amount of such credit becomes recoverable, the same shall, unless recovered under the existing law, be recovered as an arrear of tax under theCGST Act [**Section 142(6)(b) of the CGST Act refers**].

ii) **Recovery of CENVAT Credit carried forward wrongly:**

CENVAT credit of central excise duty/service tax availed under the existing law may be carried forward in terms of transitional provisions as per section 140 of the CGST Act subject to the conditions prescribed therein. Any credit which is not admissible in terms of section 140 of the CGST Act shall not be allowed to be transitioned or carried forward and the same shall be recovered as an arrear of tax under section 79 of the CGST Act.

iii) **Recovery of arrears of central excise duty and service tax:**

a. Where in pursuance of an assessment or adjudication proceedings instituted, whether before, on or after the appointed day, under the existing law, any amount of tax, interest, fine or penalty becomes recoverable, the same shall, unless recovered under the existing law,be recovered as an arrear of tax under the CGST Act [**Section 142(8)(a)of the CGST Act refers**].

b. If due to any proceedings of appeal, review or reference relating to output duty or tax liability initiated,whether before, on or after the appointed day, under the existing law, any amount of output duty or tax becomes recoverable, the same shall, unless recovered under the existing law,be recovered as an arrear of tax under theCGST Act [**Section 142(7)(a)of the CGST Act refers]**.

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iv) **Recovery of arrears due to revision of return under the existing law:** Where any return, furnished under the existing law, is revised after the appointed day and if, pursuant to such revision, any amount is found to be recoverable or any amount of CENVAT credit is found to be inadmissible, the same shall, unless recovered under the existing law, be recovered as an arrear of tax under the CGST Act [**Section 142(9)(a)of the CGST Act refers**].

4. In view of the above legal provisions, recovery of central excise duty/ service tax and CENVAT credit thereof arising out of the proceedings under the existing law, unless recovered under the existing law, and that of inadmissible transitional credit,is required to be made as an arrear of tax under the CGST Act.The following procedure is hereby prescribed for the recovery of arrears:

4.1 **Recovery of central excise duty, service tax or wrongly availed CENVAT credit thereof under the existing law and inadmissible transitional credit:**

(a) The CENVAT credit of central excise duty or service tax wrongly carried forward as transitional credit shall be recovered as central tax liability to be paid through the utilization of amounts available in the **electronic credit ledger or electronic cash ledger** of the registered person, and the same shall be recorded in **Part II** of the Electronic Liability Register (**FORM GST PMT-01).**

(b) The arrears ofcentral excise duty, service tax or wrongly availed CENVAT credit thereof under the existing lawarising out of any of the situations discussed in para 3 above, shall, unless recovered under the existing law, be recovered as central tax liability to be paid through the utilization of amounts available in the **electronic credit ledger or electronic cash ledger** of the registered person, and the same shall be recorded in **Part II** of the Electronic Liability Register **(FORM GST PMT-01)**.

4.2 **Recovery of interest, penalty and late fee payable:**

(a) The arrears of interest, penalty and late fee in relation to CENVAT credit wrongly carried forward, arising out of any of the situations discussed in para 3 above, shall be recovered as interest, penalty and late fee of central tax to be paid through the utilization of the amount available in **electronic cash ledger**of the registered person and the same shall be recorded in **Part II** of the Electronic Liability Register (**FORM GST PMT-01**).

(b) The arrears of interest, penalty and late fee in relation to arrears of central excise duty, service tax or wrongly availed CENVAT credit thereof under the existing law arising out of any of the situations discussed in para 3 above, shall, unless recovered under the existing law, be recovered as interest, penalty and late fee of central tax to be paid through the utilization of the amount available in the **electronic cash ledger** of the registered person and the same shall be recorded in **Part II** of the Electronic Liability Register (**FORM GST PMT-01**).

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4.3 **Payment of central excise duty & service tax on account of returns filed for the past period:**

The registered person may file Central Excise / Service Tax return for the period prior to 1st July, 2017 by logging onto **www.aces.gov.in** and make payment relating to the same through EASIEST portal (**cbec-easiest.gov.in**), as per the practice prevalent for the period prior to the introduction of GST. However, with effect from 1st of April, 2018, the return filing shall continue on **www.aces.gov.in** but the payment shall be made through the ICEGATE portal. As the registered person shall be automatically taken to the payment portal on filing of the return, the user interface remains the same for him.

4.4 **Recovery of arrears from assessees under the existing law in cases where such assessees are not registered under the CGST Act, 2017:**

Such arrears shall be recovered in cash, under the provisions of the existing law and the payment of the same shall be made as per the procedure mentioned in para 4.3 supra.

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 this Circular may please be brought to the notice of the Board. Hindi version would follow.

(Upender Gupta)
Commissioner (GST)