



# कर सल्लागार असोसिएशन रत्नागिरी जिल्हा (TAX PRACTITIONERS' ASSOCIATION OF RATNAGIRI DISTRICT)

Soc. Reg. No. : Maharashtra / 5799 / Ratnagiri dt 5 - 1 - 2017  
Trust Reg. No. : F / 5761 / Ratnagiri dt 11 - 4 - 2017

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Date: 7<sup>th</sup> August, 2024

To,  
The Joint Commissioner of State Tax  
Maharashtra State  
Kolhapur - 416001

**Subject:** - Representation regarding keeping recovery in abeyance in respect of cases involving ITC disallowance U/s 16(4)

**Reference:** - Circular No.224/18/2024 Dt.11.07.2024 regarding Guidelines for recovery of dues.

Respected Sir,

1. At the outset, we would firstly like to thank both the Governments on behalf of our members and the tax payers in general for introducing various beneficial amendments in the Financial Bill (No. 2), 2024. The CBIC has also issued various circulars pursuant to the Recommendations of the GST Council in its 53<sup>rd</sup> Meeting.
2. We would like to draw your attention towards the Circular No. 224/18/2024 Dt.11.07.2024 regarding Guidelines for recovery of dues, in cases wherein first appeal has been disposed off and the assesses want to file second appeal U/s 112 before Hon'ble GSTAT. As per the provisions of Sub-section 8 of Section 112 of the CGST Act, the recovery proceedings for the outstanding dues is deemed to be stayed till disposal of the appeal by the Hon'ble GSTAT on payment of prescribed pre-deposit for appeal. But due to non- constitution of Hon'ble GSTAT, the tax payers were not able to file the appeal or make payment of pre-deposit for second appeal. In such cases, the Para 4 & 5 of the aforesaid Circular had given option as under -
  - a. In cases where the taxpayer decides to file an appeal against the order of the first appellate authority and wants to make the payment of the amount of pre-deposit as per sub-section (8) of section 112 of CGST Act, he can make the payment of an amount equal to the amount of pre-deposit by navigating to Services >> Ledgers>> Payment towards demand, from his dashboard. The taxpayer

## Committee Members

Adv. Abhijit Berde | Mr. Rajendra Bhawe | Adv. Ravindra Salvi | Mr. Chandrashekhar Sapte  
CA Chaitanya Vaidya | Adv. Ujwal Bapat | CA Hrishikesh Phadke

would be navigated to Electronic Liability Register (ELL) Part-II in which he can select the order, out of the outstanding demand orders, against which payment is intended to be made. The amount so paid would be mapped against the selected order and demand amount would be reduced in the balance liability in the aforesaid register. The said amount deposited by the taxpayer will be adjusted against the amount of pre-deposit required to be deposited at the time of filing appeal before the Appellate Tribunal.

- b. The taxpayer also needs to file an undertaking/ declaration with the jurisdictional proper officer that he will file appeal against the said order of the appellate authority before the Appellate Tribunal, as and when it comes into operation, within the timelines mentioned in section 112 of the CGST Act read with Central Goods and Services Tax (Ninth Removal of Difficulties) Order, 2019 dated 03.12.2019. On providing the said undertaking and on payment of an amount equal to the amount of pre-deposit as per the procedure mentioned in para 4 above, the recovery of the remaining amount of confirmed demand as per the order of the appellate authority will stand stayed as per provisions of sub-section (9) of section 112 of CGST Act.
3. We take this opportunity to represent certain issues with respect to implementation of the above provisions for the recovery actions started against the dealers by the department.
4. Sir in initial years, such as F.Y. 2017-2018, F.Y. 2018-2019, many adjudication orders have been passed raising demand merely on the ground of dis-allowance of ITC u/s. 16(4). In many orders on the grounds for demand if dis-allowance of ITC u/s. 16(4). Now the Government has introduced Section 16(5) in the GST Law retrospectively w.e.f. 01.07.2017. In view of the Section 16(5) all ITC availed by the tax payer up to the November 2021 will not be hit by the restriction of Section 16(4) and the same even if claimed beyond the time limits prescribed in Section 16(4) is regularised. Thus, no tax liability will arise on account of Section 16(4) for the periods F.Y. 2017-2018, F.Y. 2018-2019, F.Y. 2019-2020 where in ITC for invoices pertaining to said years are availed before November 2021.
5. In view of the above beneficial amendment in Section 16(5), it would be unjust to recover dues from the tax payers where the demand is raised merely on account of ITC dis-allowance under Section 16(4) or one of the grounds for demand in the order is ITC disallowance u/s 16(4). Further, it would also be injustice to if the tax payers are required to pay additional pre-deposit for filing second appeal in Hon'ble GSTAT for the issue of ITC dis-allowance u/s. 16(4). as per the Para 4 & 5 of the abovementioned Circular.
6. In view of the above issues, it is humbly represented that, a clarification may issued to keep recovery of for orders where the liability raised in the appeal order is due to disallowance of ITC U/s 16(4) in abeyance. The proper officers should not insist upon making the payment of further pre-deposit for Tribunal appeal, otherwise it will defeat the intention of the Law. It is also a settled law by the Supreme Court that first making payment and then giving refund is no solace.
7. We also humbly suggest to make appropriate provision U/s 161 of the CGST Act, 2017 for making application for Rectification of mistake before the Proper Officer / first appellate authority in the cases in which the liability is going to be reduced due to implementation of Section 16(5) in the

CGST Act, 2017. This will not only lead reduction in litigation burden before the Hon'ble GSTAT but also benefit the Department in general to close the recovery proceedings.

8. The above issues require your immediate attention and intervention and we request to please consider the issues and if necessary forward the same to concerned authorities for taking appropriate action. We thankfully request your honour to consider the above issues.
9. We shall be happy to meet you in person to explain the issues and representation as per the convenient time and date.

Thanking you,  
Yours faithfully,

President

CA Varadraj Pandit

Head of Representation Committee

Adv. Abhijeet Berde



- CC: Finance Minister, Maharashtra
- CC: Finance Minister, Union of India
- CC: The Chief / Principal Commissioner of CGST, Mumbai
- CC: The Chief / Principal Commissioner of CGST, Pune
- CC: The Chief / Principal Commissioner of CGST, Nagpur