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Procedure for Rectification of Order for ITC  
Under Section 16(5) of CGST Act, 2017

## Understanding Section 16(5) of the CGST Act, 2017

Section 16(5) of the CGST Act, 2017 has been implemented for availment of GST Credit for **FYs 2017-18 to 2020-21**:

### • Important Points to Remember

- Section 16(5) has been inserted retrospectively with effect from **01.07.2017** to give relief to tax payers whose ITC was time barred due to time limit imposed on section 16(4). To comprehend Section 16(5), we should first understand Section 16(4).
- **Earlier section 16(4) of CGST Act, 2017** stated that a registered person shall not be entitled to take input tax credit in respect of any invoice or debit note for supply of goods or services or both after due date of furnishing of the return under section 39 for the month of September following the end of financial year to which such invoice or debit note pertains or furnishing of the relevant annual return, whichever is earlier.
- **Whereas, Section 16(5) of CGST Act, 2017** states that, notwithstanding anything contained in sub-section (4), in respect of an invoice or debit note for supply of goods or services or both pertaining to the Financial Years 2017-18, 2018-19, 2019-20 and 2020-21, the registered person shall be entitled to take input tax credit in return under section 39 which is filed up to the 30<sup>th</sup> of November, 2021.
- Therefore, now as per section 16(5) if ITC was claimed up to 30<sup>th</sup> of November will be considered as eligible ITC. Tax authorities and/or taxpayers may take the following actions in different scenarios to benefit from the retrospectively inserted provisions of sub-section (5) of Section 16 of the CGST Act;

### • The Taxpayer shall consider sub-section 16(5)

When an order under Section 73 or Section 74 or Section 107 or Section 108 of the CGST Act has been issued for wrong availment of ITC, but is now available as per Section 16(5) & no appeal has been filed by taxpayer, the concerned taxpayer may apply for rectification of the order under section 148 of the CGST Act notified vide Notification No. 22/2024

- **The proper officer shall consider sub-section 16(5)**

When an investigation or proceedings have been initiated concerning the wrong claim of input tax credit, alleging a violation of the provisions of sub-section (4) of Section 16 of the CGST Act, but no demand notice or statement under Section 73 or Section 74 has been issued, taxpayers may now be eligible to claim the input tax credit as per the provisions of sub-section (5).

- **The Adjudicating Authority shall consider sub-section 16 (5)**

When a demand notice or statement under Section 73 or Section 74 of the CGST Act has been issued but no order has been passed by the Adjudicating Authority.

- **The Appellate Authority shall consider sub-section 16(5)**

When an order under Section 73 or Section 74 has been issued and an appeal has been filed under Section 107 with the Appellate Authority, but no order has yet been issued by the Appellate Authority.

- **The Revisional Authority shall consider sub-section 16(5)**

When an order under Section 73 or Section 74 has been issued and the Revisional Authority has initiated proceedings under Section 108, but no order has yet been issued by the Revisional Authority.

- **Now let's understand how to file rectification application**

- **Application for rectification of an order issued under section 73 or section 74;**

Click Dashboard > Services > User Services > My Applications, Select "Application for rectification of order" in the Application Type field. Then, click the NEW APPLICATION button.

- **Application for rectification of an order issued under section 107 or 108 of is to be filed;**

Click Dashboard > Services > User Services > View Additional Notices/Orders, Click the View hyperlink to go to the Case Details screen of the issued Notice/Order.

- For Section 107 -The APPLICATIONS tab is selected by default. Select the ORDERS tab and click the "Initiate Rectification" link.
- For Section 108 - The NOTICES tab is selected by default. To submit Rectification Request against the Revision Order issued to you by the Revisional Authority, select the ORDERS tab and click the "Initiate Rectification" link.

While filing such application for rectification of order, the taxpayer shall upload along with the application for rectification of order, the information in the proforma in Annexure A of the said notification, containing inter-alia the details of the demand confirmed in the said order of the input tax credit wrongly availed on account of contravention of sub-section (4) of section 16 of the CGST Act, which is now eligible as per sub-section (5) and/or sub-section (6) of section 16 of the CGST Act.

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