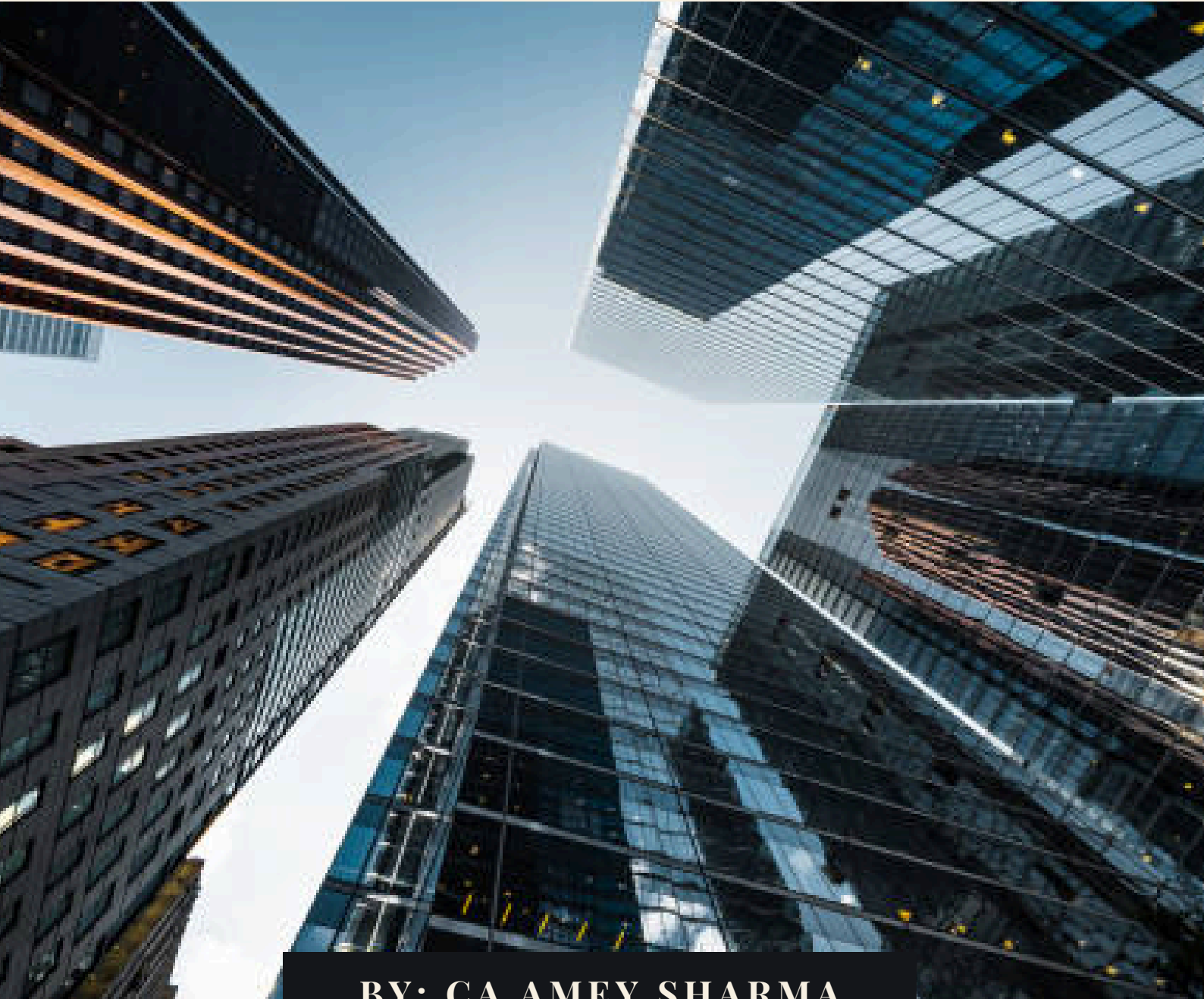


FEB 2025 | 3RD & 4TH WEEK

TAXWEEKLY

The Weekly Magazine on recent updates and developments in Tax regime.



BY: CA AMEY SHARMA

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THE TAXWEEKLY MAGAZINE

- CA AMEY SHARMA

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Procedure to be followed in department appeal filed against interest and/or penalty only, related to Section 128A of the CGST Act, 2017

Kind attention is invited to the Section 128A of the Central Goods and Service Tax Act, 2017 (hereinafter referred as 'the CGST Act') read with Rule 164 of the Central Goods and Service Tax Rules, 2017 (hereinafter referred as 'the CGST Rules') which provides waiver of interest or penalty or both, relating to demands under section 73 of the CGST Act pertaining to Financial Years 2017-18, 2018-19 and 2019-20, subject to certain conditions.

Further vide Circular No. 238/32/2024-GST dated 15th October, 2024, various doubts related to section 128A were clarified.

In this regard, references have been received from various field formations seeking clarification from the Board as to whether the benefit of section 128A (supra) be extended to taxpayers in cases where the tax amount has been paid but the department has gone in Appeal on the basis of wrong arithmetic calculation of interest, or where penalty is either not imposed or imposed less than the prescribed threshold etc.

The matter has been examined by the Board. It has been observed that at S. No. 4 of the Table under para 4 in the aforesaid circular, it is clarified that cases where the tax due has already been paid and the notice or demand orders under Section 73 only pertains to interest and/or penalty involved, the same shall be considered for availing the benefit of section 128A.

Hence, it is evident that in cases where the taxpayer has paid the full amount of tax and only interest and/or penalty is in dispute by the taxpayer, then he is eligible to avail the benefit of Section 128A of the CGST Act.

On the similar pattern, it is felt that just because the department has gone in appeal or is in the process of filing an appeal, a taxpayer who is otherwise eligible for availing the benefit of section 128A, should not be denied the benefits.

Further the intention of the said provision is to reduce litigation and a taxpayer should not be denied the benefit of the provision on mere technicalities.

Based on the above, it is decided that in cases where the tax amount has been fully paid by the taxpayer on demands made under section 73 of the CGST Act and the department is in appeal or under the process of filing an appeal only on account of wrong interest calculation and/or wrong imposition or non-imposition of penalty amount under the provisions of CGST Act or IGST Act and the taxpayer fulfils other conditions of section 128A and the rules made thereunder, the proper officer may proceed towards withdrawing such appeal filed and in case where the order under section 73 is under review stage only, accept the same.

Extension of due date for filing of Form No. 56 F under the Income-tax Act, 1961- reg.

On consideration of difficulties reported by the taxpayers and other stakeholders in timely filing of report of accountant required to be filed under sub-section (8) of section 10AA read with sub-section (5) of section 10A of the Income-tax Act, 1961 ('the Act') and with a view to avoid genuine hardship to such cases,

the Central Board of Direct taxes, in exercise of its powers under section 119(2)(b) of the Income Tax Act, 1961,

hereby extends the due date of filing of report of the accountant as required to be filed under sub-section (8) of section 10AA read with sub-section (5) of section 10A of the Act, for Assessment year 2024-25 from the specified date under section 44AB of the Act

Extension of due date for filing of Form No. 56 F to 31.03.2025.

**F. No. 19354/2/2025-TO(TRU-II)-CBEC
Government of India
Ministry of Finance
Department of Revenue
(Tax Research Unit)**

North Block, New Delhi
Date: 14th February, 2025

To,

The Principal Chief Commissioners/ Principal Directors General,
The Chief Commissioners/ Directors General,
The Principal Commissioners/ Commissioners of Central Excise & Central Tax

Subject: Clarification regarding GST rates & classification (goods) based on the recommendations of the GST Council in its 55th meeting held on 21st December, 2024, at Jaisalmer -reg.

Madam/Sir,

Based on the recommendations of the GST Council in its 55th meeting held on 21st December, 2024, at Jaisalmer, in exercise of the powers conferred under section 168(1) of the Central Goods and Services Tax Act, 2017, the Board hereby clarifies the following issues through this circular for the purpose of uniformity in their implementation:

1. Clarification regarding classification and GST rate on pepper of genus Piper

1.1 References were received seeking clarification on the classification and applicable GST rate on supply of pepper of the genus Piper and whether supply of dried pepper by an agriculturist is exempt from GST.

1.2 Based on the recommendations of the GST Council in its 55th meeting, it is hereby clarified that pepper of genus Piper, whether green (fresh), white or black, is covered under HS

0904 and attracts 5% GST vide S. No. 38 of Schedule I of notification No. 1/2017-Central Tax (Rate) dated the 28th June, 2017.

1.3 As regards applicability of GST on supply of dried pepper by an agriculturist from their plantations, Section 23 (1) (b) of the CGST Act provides that an agriculturist, as defined in Section 2(7) of the CGST Act, to the extent of supply of produce out of cultivation of land is not liable to take registration.

1.4 As per the recommendation of the GST Council, it is hereby clarified that an agriculturist supplying dried pepper is not liable to be registered under Section 23(1) of the CGST Act is exempt from GST.

2. Clarification regarding raisins supplied by an agriculturist

2.1 Reference was received seeking clarification on the applicable rate on supply of raisins by agriculturists.

2.2 As per the recommendation of the GST Council, it is hereby clarified that an agriculturist supplying raisins is not liable to be registered under Section 23(1) of the CGST Act is exempt from GST.

3. Clarification on GST rate on ready to eat popcorn

3.1 Representations were received seeking clarification regarding appropriate classification and applicable GST rate on ready to eat popcorn.

3.2 On the recommendation of the Council, it is hereby clarified that ready to eat popcorn which is mixed with salt and spices are classifiable under HS 2106 90 99. It is also hereby clarified that such ready to eat popcorn mixed with salt and spices classifiable under HS 2106 90 99 attracts 5% GST if other than pre-packaged and labelled vide S. No. 101A of Schedule I of notification No. 1/2017-Central Tax (Rate) dated the 28th June, 2017 and 12% GST if sold as packaged and labelled vide S. No. 46 of Schedule II of notification No. 1/2017-Central Tax (Rate) dated the 28th June, 2017, as it has the essential character of namkeens. However, when the popcorn is mixed with sugar thereby changing its character to sugar confectionary (e.g. caramel popcorn), it would be classifiable under HS 1704 90 90 attracting 18% GST vide S. No. 12 of Schedule III of notification No. 1/2017-Central Tax (Rate) dated the 28th June, 2017

3.3 Further, in view of the prevailing genuine doubts regarding the applicability of GST rate on ready to eat popcorn mixed with salt and spices, as recommended by the Council the issue for past period up to 14.2.2025 is hereby regularized on ‘*as is where is*’ basis.

4. Fly ash based Autoclaved Aerated Concrete Blocks

4.1 References were received regarding the classification and applicable GST rate on autoclaved aerated concrete (AAC) blocks containing at least 50% fly ash content as raw material.

4.2 Fly ash bricks, fly ash aggregates and fly ash blocks classifiable under HS 6815 attract 12% GST vide S. No. 176B of Schedule II of notification No.1/2017-Central Tax (Rate) dated 28.06.2017. Articles of cement, of concrete or of artificial stone, whether or not reinforced classifiable under HS 6810 attract 18% GST vide S.No. 181 of Schedule III of notification No. 1/2017-Central Tax (Rate) dated 28.06.2017.

4.3 As per the recommendation of the GST Council, it is hereby clarified that autoclaved aerated concrete (AAC) blocks containing more than 50% fly ash content will fall under HS 6815 and attract 12% GST.

5. Effective date of amended entry regarding ground clearance

5.1 Representations were received that there are different views in some jurisdictions regarding the effective date of amended entry 52B in notification No. 1/2017-Compensation Cess (Rate) dated 28.06.2017.

5.2 Prior to the 50th GST Council meeting, vide entry at S.No. 52B in the notification No. 01/2017- Compensation Cess (Rate) dated 28.06.2017, motor vehicles of engine capacity exceeding 1500 cc, popularly known as SUVs, including utility vehicles attracted 22% Compensation Cess.

5.3 Following the 50th GST Council meeting, vide notification No. 03/2023- Compensation Cess (Rate) dated 26.07.2023, the entry 52B was substituted to provide that the cess will be applicable to all motor vehicles known as utility vehicles by whatever name called, with engine capacity exceeding 1500cc, length exceeding 4000mm and ground clearance of 170mm and

above. Further, a new explanation was added that ground clearance means ground clearance in unladen condition.

5.3 As per the recommendation of the GST Council, it is hereby clarified that the amendment carried out vide notification No. 03/2023- Compensation Cess (Rate) dated 26.07.2023 will apply on or after 26.7.2023.

6. Difficulty, if any, in the implementation of this circular may be brought to the notice of the Board.

Yours faithfully,



(Limatula Yaden)

14/2/2025

Joint Secretary (TRU-I)

Tel: 011 -2309 2687



TAXWEEKLY

A Weekly magazine of recent updates in Tax regime.

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Respected all, I am a practicing chartered accountant currently partner with M. Sharma S. Agrawal & Co. Head Office, Nagpur.

I have major interests in field of Direct Tax, Indirect Taxes, Insolvency Laws etc. During my Articleship, I have presented papers on the same at the ICAI student conferences and also written various articles on GST at various platforms. I have also started a weekly tax magazine named TAXWEEKLY regarding weekly updates on taxation.

Kind Regards, CA AMEY SHARMA, Nagpur (9372223834)

Through this newsletter, I am not rendering any professional advice or service whatsoever and Every effort has been made to avoid errors or omissions

