



CBIC Clarifies the scope of “as is/as is, where is basis” in case of two competing rates of GST

What is “as is/as is, where is basis”?

The CBIC, vide Circular No. 236/30/2024-GST, dated:11.10.2024, has clarified that in the context of GST, the phrase ‘regularized on as is where is’ means that payment made at a lower rate or exemption claimed by the taxpayer shall be accepted, and no refund shall be made if tax has been paid at the higher rate. **In other words, in respect of past periods, no refund will be paid or no demand will be raised, in case a circular has been issued to regularize the GST rate on an “As is” or “As is, where is basis”.**

Circulars have been issued based on the recommendation of the GST Council wherein GST non-payment/ short-payments for the past periods have been regularized “As is” or “As is, where is basis” in certain cases for supply of goods or services or both. Regularization for the past period has been done, on the recommendations of the Council, in situations, such as, where genuine doubts have arisen as there are two competing entries with different rates in the notifications or issues have arisen due to diverse interpretations resulting in a situation where some suppliers have paid a lower rate of GST (including nil rate on account of an exemption entry) and some suppliers have paid a higher rate of GST. It has also been clarified that where taxpayers had paid at the higher GST rate, they shall not be entitled to any refund in such situations.

The intention of the Council is also to regularize payment at a lower rate including nil rate due to the tax position taken by a taxable person, as a full discharge of tax liability. The tax position of a taxable person is reflected in the returns filed by the person where the applicable rate of tax (or relevant exemption entry) on a transaction/supply is declared.

Illustrations

Illustration 1:

In a situation where certain tax payers have paid 5% GST on supply of “X”, while some have paid 12% and the GST Council recommends to reduce the rate to 5% prospectively and regularize the past on

“as is where is basis” which is notified on 1.12.2023, this means that for the period prior to 1.12.2023, the 5% GST paid by tax payer will be treated as tax fully paid and they would not be required to pay duty differential of 7% between 5% and 12%. For those tax payers who have paid 12% GST, no refund would be allowed.

Illustration 2:

In a situation where certain tax payers have paid 5% GST on supply of “X” while some have paid nil duty due to the genuine doubt that there was an exemption entry for “X”, and the GST Council recommends to clarify that the applicable rate is 5% and to regularize the past on “as is where is basis”, in view of prevailing genuine doubts, which is notified on 1.12.2023, this means that for the period prior to 1.12.2023, nonpayment of GST and declaring such transactions as exempted supply in their return by the tax payer will be treated as full discharge of tax liability and they would not be required to pay duty differential of 5 % between Nil and 5%. For those tax payers who have paid 5%, no refund would be made.

Illustration 3:

In a situation where the interpretational issue is between 5% and 12% rates and some taxpayers have paid 5 % , others have paid 12% while certain tax payers have not paid GST on supply of “X”, and the GST Council recommends to clarify that the applicable rate is 12% and regularize the past on “as is where is basis” which is notified on 1.12.2023, this means that for the period prior to 1.12.2023, the 5% GST paid by tax payer will be treated as tax fully paid and they would not be required to pay duty differential between 5% and 12% . For those tax payers who have paid 12%, no refund would be made. However, the regularization would not apply to situations where no tax has been paid. In such cases, the applicable tax i.e. 12% shall be recovered.