



Government of Kerala



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Circular No.12/2024-Kerala SGST

Sub: - Manner of penalty calculation under IGST Act, 2017 for the show cause notices issued under section 73(1)/74(1) of the KSGST Act, 2017 read with section 20 of the IGST Act, 2017 - clarifications issued - reg.

1. It has come to the notice that field formations require clarity in the computation and imposition of penalty under the fourth proviso of Section 20 of the Integrated Goods and Services Tax (IGST) Act, 2017 in cases where tax is being demanded under Section 73(1)/74(1) of the Kerala Goods and Services Tax (KSGST) Act, 2017.
2. In order to ensure uniformity in the implementation of the provisions of law across the field formations, in exercise of the powers conferred by section 168 (1) of the Kerala State Goods and Services Tax Act, 2017 (hereinafter referred to as "KSGST Act"), clarifies the issues as under:
3. Section 73 of the KSGST Act, 2017 provides for the determination of tax not paid or short paid or erroneously refunded or input tax credit wrongly availed or utilized for any reason other than fraud or any willful-misstatement or suppression of facts.
4. Section 73(9) of the KSGST Act, 2017 reads as follows: "*The proper officer shall, after considering the representation, if any, made by person chargeable with tax, determine the amount of tax, interest and a penalty equivalent to ten per cent of tax or ten thousand rupees,*

whichever is higher, due from such person and issue an order ."

5. Section 74 of the KSGST Act, 2017 provides for the determination of tax not paid or short paid or erroneously refunded or input tax credit wrongly availed or utilized by reason of fraud or any willful-misstatement or suppression of facts.
6. Section 74(1) of the KSGST Act, 2017 reads as follows:

*"(1) Where it appears to the proper officer that any tax has not been paid or short paid or erroneously refunded or where input tax credit has been wrongly availed or utilised by reason of fraud, or any wilful-misstatement or suppression of facts to evade tax, he shall serve notice on the person chargeable with tax which has not been so paid or which has been so short paid or to whom the refund has erroneously been made, or who has wrongly availed or utilised input tax credit, requiring him to show cause as to why he should not pay the amount specified in the notice along with interest payable thereon under section 50 and **a penalty equivalent to the tax specified in the notice**"*
7. Section 20(xxv) of the Integrated Goods and Services Tax Act, 2017 reads as follows: *"Subject to the provisions of this Act and the rules made thereunder, the provisions of Central Goods and Services Tax Act relating to,—(i) scope of supply; (ii) composite supply and mixed supply; (iii) time and value of supply; (iv) input tax credit;.....(xvi) demands and recovery;.....(xxi) offences and penalties;..... (xxv) miscellaneous provisions including the provisions relating to the imposition of interest and penalty, shall, mutatis mutandis, apply, so far as may be, in relation to integrated tax as they apply in relation to central tax as if they are enacted under this Act:*
8. The 4th proviso of section 20 of the Integrated Goods and Services Tax Act, 2017 says that *"in cases where **the penalty is leviable under the Central Goods and Services Tax Act and the State Goods and Services Tax Act or the Union Territory Goods and Services Tax Act, the penalty leviable under this Act shall be the sum total of the said penalties.**"*
9. In terms of 4th proviso to Section 20 of the IGST Act, the amount of

penalty to be quantified/levied is the sum total of the amount of penalty "leviable" under the CGST Act plus the SGST Act. As such, there is no independent provision of its own under the IGST Act to quantify the amount of penalty; it arrives at such quantification through the provisions of the CGST and the SGST Acts.

10. In this scenario, what emerges is that the quantum of penalty under the IGST Act is entirely dependent upon the penalty "leviable" under the CGST and the SGST Acts.
11. As per 4th proviso of Section 20 of IGST Act, the penalty leviable under the IGST Act would be the sum total of the quantum of penalty to be levied under the CGST Act and the SGST Act. This is clarified with an Illustration worked out as under:
12. **Illustration:** For a service attracting 18% rate of tax, the tax levied under CGST is at the rate of 9% and that under SGST is at the rate of 9%. If it becomes an intra-state supply, the penalty to be levied on each Act is 10% as per section 73(9) of the CGST and the SGST Acts. (i.e., $\text{Taxable value} \times 9\% \times 10\%$). Now, applying these rates to the above clause of the IGST Act-
 - o *Provided also that in cases where the penalty is leviable under the Central Goods and Services Tax Act (i.e., $\text{Taxable value} \times 9\% \times 10\%$) or the State Goods and Services Tax Act (i.e., $\text{Taxable value} \times 9\% \times 10\%$), the penalty leviable under this Act shall be the sum total of the said penalties ($(\text{Taxable value} \times 9\% \times 10\%) + (\text{Taxable value} \times 9\% \times 10\%)$)*
 - o Therefore, the penalty is (CGST ($\text{Taxable value} \times 9\% \times 10\%$) + SGST ($\text{Taxable value} \times 9\% \times 10\%$)), which is equal to 10% of (9% + 9%), i.e., which is equal to 10% of 18%.
 - o In short, the 'penalty' is ten per cent of tax amount under IGST Act. Therefore, as per section 20 of IGST Act, it is the penalty amounts that must be added, (The penalty rates should **NOT** be added.)
13. ***The above scenario can be explained with the following examples (assume the tax rate is 18%):***

Example 1: An adjudicating authority has decided to confirm a demand under section 73 of the Act for the non-payment of the following taxes:

Inv. No.	Inv. Date	Tax Period	Taxable Value	IGST	CGST	SGST
IG031	10.06.2019	June 2019	2,00,000	36,000		
CS046	21.07.2019	July 2019	10,00,000		90,000	90,000
CS082	12.10.2019	Oct. 2019	15,00,000		1,35,000	1,35,000
		Total	27,00,000	36,000	2,25,000	2,25,000

The adjudicating authority should impose the penalty under the IGST Act in the following manner:

Description	Calculation	Penalty amount (Rs.)
Penalty leviable under the CGST & the SGST Acts are 10% or 10,000/- each whichever is higher.	$CGST = 25,00,000 \times 9\% \times 10\%$ (or) 10,000 whichever is higher	22,500/- (CGST) & 22,500/- (SGST)
Penalty leviable under IGST Act (as per 4 th proviso of section 20 of the IGST Act)	$CGST = 2,00,000 \times 9\% \times 10\%$ (or) 10,000 whichever is higher + $SGST = 2,00,000 \times 9\% \times 10\%$ (or) 10,000 whichever is higher	3,600 (1,800+1,800) or 20,000 (10,000 +10,000) whichever is higher. Here it is Rs. 20,000/-

Example 2: An adjudicating authority has decided to confirm a demand under section 73 of the Act for the following items of ineligible ITC utilized by a taxable person.

Inv. No.	Inv. Date	Tax Period	Taxable Value	IGST	CGST	SGST
H3744	14.04.2020	Apr. 2020	72,00,000	12,96,000		
P4180	08.08.2020	Aug. 2020	1,00,00,000	18,00,000		
		Total	1,72,00,000	30,96,000		

The adjudicating authority should impose the penalty under the IGST Act in the following manner;

Description	Calculation	Penalty amount (Rs.)
Penalty leviable under IGST Act (as applicable in CGST Act)	$1,72,00,000 \times 9\% \times 10\%$ (or) 10,000 whichever is higher + $1,72,00,000 \times 9\% \times 10\%$ (or) 10,000 whichever is higher	Here, the penalty to be imposed is Rs. 3,09,600/- (1,54,800 + 1,54,800) or 20000 (10,000+10,000) whichever is higher and not '0' (as there is no demand in CGST & SGST))

Example 3: An adjudicating authority has decided to confirm a demand under section 73 of the Act for the following taxes not paid by a taxable person.

Inv. No.	Inv. Date	Place of Supply	Taxable Value	IGST	CGST	SGST
G123	14.04.2020	Delhi	15,00,000	2,70,000		
G252	08.05.2020	Karnataka	24,00,000	4,32,000		
G300	10.06.2020	Tamil Nadu	35,00,000	6,30,000		
G567	13.07.2020	Odisha	10,00,000	1,80,000		
G1012	12.11.2020	Kerala	10,00,000	0	90,000	90,000
		Total	94,00,000	15,12,000	90,000	90,000

Here, the Place of Supply extends across multiple states. Here the penalty levied cannot be apportioned among all the states involved, nor can it be exclusively credited to any particular state. In such a situation, all the recipient states have suffered tax loss in these transactions and are entitled to receive the penalty as per the place of supply provisions of the Act. Therefore, the calculation of penalty under IGST Act shall be made in the

following manner:

Description	Destination	Calculation	Penalty amount (Rs.)
Penalty leviable under IGST Act	Delhi	$15,00,000 \times 9\% \times 10\%$ (or) 10,000 whichever is higher + $15,00,000 \times 9\% \times 10\%$ (or) 10,000 whichever is higher	IGST - 27,000/- 13,500+13,500 (or) 10,000+10,000 whichever is higher
	Karnataka	$24,00,000 \times 9\% \times 10\%$ (or) 10,000 whichever is higher + $24,00,000 \times 9\% \times 10\%$ (or) 10,000 whichever is higher	IGST - 43,200/- 21,600+21,600 (or) 10,000+10,000 whichever is higher
	Tamilnadu	$35,00,000 \times 9\% \times 10\%$ (or) 10,000 whichever is higher + $35,00,000 \times 9\% \times 10\%$ (or) 10,000 whichever is higher	IGST - 63,000/- 31,500+31,500 (or) 10,000+10,000 whichever is higher
	Odisha	$10,00,000 \times 9\% \times 10\%$ (or) 10,000 whichever is higher + $10,00,000 \times 9\% \times 10\%$ (or) 10,000 whichever is higher	IGST - 20,000/- 9,000+9,000 (or) 10,000+10,000 whichever is higher
	Kerala	$10,00,000 \times 9\% \times 10\%$	IGST

<p>The penalty is to be levied under the CGST & the SGST Act and it is calculated at the rate of 10% or 10,000/- each, whichever is higher.</p>	<p>10,00,000 x 9% x 10% (CGST + SGST)</p>	<p>+ (or) 10,000 whichever is higher and 10,00,000 x 9% x 10% (or) 10,000 whichever is higher</p>	<p>CGST - 10,000/- & SGST - 10,000/-</p>
<p>The total penalty under IGST is = 27000 + 43200 + 63000 + 20000 = Rs.1,53,200/- and not Rs. 1,51,200/- (10% of IGST total tax liability).</p>			

Difficulty, if any, in the implementation of the above instructions may please be brought to the notice of the undersigned.

ABRAHAM RENN S IRS
Commissioner

To

All Concerned