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## Circular No:16/2023

Sub: Subject-wise issuance of separate notices to the same taxpayer under sections 73 and 74 of the KSGST Act, 2017 - Instructions issued - reg

In exercise of powers conferred under section 168 of KSGST Act 2017, the following circular instructions are issued to bring out uniformity in issuing notices while proceeding under section 73 and section 74 .

1. Section 73 of the Kerala State Goods and Services Tax Act/Central Goods and Services Tax Act, 2017 (hereinafter referred to as “the said Acts”) 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. Section 74 of the said Acts provides for the determination of tax not paid or short paid or erroneously refunded or input tax credit wrongly availed or utilised by reason of fraud or any wilful-misstatement or suppression of facts.
2. Section 6(2)(b) of the Kerala State Goods and Services Tax Act, 2017 reads as follows *“where a proper officer under the Central Goods and Services Tax Act, 2017 (Central Act 12 of 2017) has initiated any proceedings on a subject matter, no proceedings shall be initiated by the proper officer under this Act on the same subject matter.”* Similarly, Section 6(2)(b) of the Central Goods and Services Tax Act, 2017 reads as *“where a proper officer under the State Goods and Services Tax Act or the Union Territory Goods and Services Tax Act has initiated any proceedings on a subject matter, no proceedings shall be initiated by the proper officer under this Act on the same subject matter.”*
3. Therefore, GST law envisages a subject matter-based litigation system primarily based on the self-assessed returns filed by the taxpayer. Each subject matter of a taxpayer is to be treated independent of the other subject matters of the

same taxpayer so that the Central GST administration is at liberty to initiate proceedings on a different subject matter of a taxpayer who is already under a proceeding of the State GST administration.

4. This being the position, situations can arise wherein the nature of issues involved against a single taxpayer are such that simultaneous actions are to be initiated under both the sections 73 and 74. Certain subject matters identified therein may not satisfy the conditions of Section 74, especially the definition of suppression as per Explanation 2 to Section 74, whereas some others may satisfy the conditions of Section 74. This situation may arise when action is initiated under relevant provisions of the Act in Audit/Intelligence/Tax Payer Services verticals.

5. Under these circumstances, it is clarified that in case a taxpayer is found to have multiple subject matters for which determination of tax is required under both Sections 73 and 74 of the said Acts, separate notices shall be issued to the taxpayer under each section for the respective subjects matters. All the subject matters that fall under Section 73 should be covered in a notice issued under that section, while the remaining matters pertaining to Section 74 shall be dealt in a separate notice under the said Section. Therefore, the JC Intelligences who approve the investigation report, the audit monitoring committee which considers draft audit paras, the proper officer in Taxpayer services who undertakes scrutiny of returns etc. are required to clearly delineate the subject matters between Sections 73 and 74.

6. Further, it is also seen that the process of closure of proceedings in Section 73 and 74 speaks of conclusion at the notice level and not at the subject matter level. For instance, a notice issued under section 73(1) is concluded entirely in section 73(8), rather than on a specific subject matter within that notice. Similar situation exists in Section 74. Therefore, the subject matters that fall under Section 73 and those matters which fall under Section 74 should not be combined into a single notice as it creates difficulty in operationalizing the subsequent adjudication/closure provisions under each of those Sections.

7. Needless to say, in line with existing instructions and the provisions of Section 73 and 74, the adjudication and closure of each notice/proceeding under Section 73 and 74 shall be independent of each other.

  
09/11/23  
COMMISSIONER

To

All concerned