

Withdrawal of Appeal & Special Rectification Under NNo. 22/2024: A Viable Approach for ITC Disallowed Under Section 16(4)?

Description

ITC Disallowed Demand under 16(4) – Withdrawal of Appeal & Special Rectification under NNo. 22/2024

For cases where ITC was disallowed under Section 16(4) and demand was raised but is now allowed due to the retrospective introduction of Sections 16(5)/(6), Circular 237 provides clarity on cases where appeals are pending. It states that if an appeal is ending for order, the appellate officer will pass an appropriate (favorable) order considering Sections 16(5)/(6).

However, a key question arises: **Can the dealer withdraw the appeal and directly file a special rectification under NNO. 22/2024 with the Assessing Authority?**

While Circular 237 does not explicitly mention withdrawal of appeal followed by rectification, it also does not restrict this route. Logically, upon withdrawing the appeal, the original order stands restored, making it eligible for special rectification similar to cases where no appeal was filed.

Practical Implementation:

Withdraw the appeal and obtain acknowledgment from the appellate officer.

File a special rectification request against the restored original order under NNO.22/2024.

The rectification should be processed, removing the demand raised under Section 16(4).

Notably, this approach was recently discussed in a State Officers' VC, where jurisdictional authorities have been advising dealers to proceed in this manner.

Please share contrary views , if any!

3.3 Where order under section 73 or section 74 of the CGST Act has been issued but an appeal has been filed under section 107 of the CGST Act with the Appellate Authority but no order under section 107 of the CGST Act has been issued by the Appellate Authority:

In such cases, the Appellate Authority shall take cognizance of sub-section (5) of section (6) of section 16 of the CGST Act, inserted retrospectively with effect from 01.07.2017, and pass appropriate order under section 107 of the CGST Act.

Category

1. GST

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