

Intricacies of ITC & closure of books

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Some legal terms

- Sec 2(59) : “Input” means any goods other than capital goods used or intended to be used by a supplier in the course or furtherance of business.
- Sec 2(19) : “Capital Goods” means goods, the value of which is capitalised in the books of account of the person claiming the ITC and which are used or intended to be used in the course or furtherance of business.
- Sec 2(60) : “Input Service” means any service used or intended to be used by a supplier in the course or furtherance of business.
- Sec 2(63) : “Input Tax Credit” means the credit of input tax

Some legal terms

Sec 2(62) : “INPUT TAX” in relation to a registered person, means the central tax, State tax, integrated tax or Union territory tax charged on any supply of goods or services or both made to him and includes —

- (a) the integrated goods and services tax charged on import of goods
- (b) the tax payable under the provisions of sub-sections (3) and (4) of section 9
- (c) the tax payable under the provisions of sub-sections (3) and (4) of section 5 of the Integrated Goods and Services Tax Act
- (d) the tax payable under the provisions of sub-sections (3) and (4) of section 9 of the respective State Goods and Services Tax Act or
- (e) the tax payable under the provisions of sub-sections (3) and (4) of section 7 of the Union Territory Goods and Services Tax Act,

but does not include the tax paid under the composition levy

Sec 16(1)



Every registered person shall, subject to such conditions and restrictions as may be prescribed and in the manner specified in section 49, be entitled to take credit of input tax charged on *any supply of goods or services or both to him* which are used or intended to be used in the course or furtherance of his business and the said amount shall be credited to the electronic credit ledger of such person.

What if person is NOT registered ?

Conditions & Restrictions ?

Manner ?

Entitlement v/s availment v/s utilisation v/s taking

Sec 16(2)

Notwithstanding anything contained in this section, no **registered** person shall be entitled to the credit of any input tax in respect of any supply of goods or services or both to him **unless** –

(a) he is in **possession of a tax invoice or debit note** issued by a supplier registered under this Act, or such other tax paying documents as may be prescribed;

(b) he has **received the goods or services** or both.

Explanation — For the purposes of this clause, it shall be deemed that the registered person has received the goods where the goods are delivered by the supplier to a recipient or any other person on the direction of such registered person, whether acting as an agent or otherwise, before or during movement of goods, either by way of transfer of documents of title to goods or otherwise;

(c) subject to the provisions of section 41, **the tax charged in respect of such supply has been actually paid to the Government**, either in cash or through utilisation of ITC admissible in respect of the said supply; and

(d) he has **furnished the return** under section 39

- Provided that where the goods against an invoice are received in lots or instalments, the registered person shall be entitled to take credit upon receipt of the last lot or instalment.

Why ?

- Provided further that where a recipient fails to pay to the supplier of goods or services or both, other than the supplies on which tax is payable on reverse charge basis, the amount towards the value of supply along with tax payable thereon within a period of 180 days from the date of issue of invoice by the supplier, an amount equal to the ITC availed by the recipient shall be added to his output tax liability, along with interest thereon, in such manner as may be prescribed.

- What if the payment is NOT made in full ?
- What if the assessee makes the payment later on ?

~~ITC reversal~~

Intricacies of Sec 16(4)

OPPOSITION
to notice is
compulsory

- **Sec 16(4)** : A taxable person shall NOT be entitled to **take ITC in respect of any invoice or debit note** for supply of goods or services or both **AFTER the DUE DATE** of furnishing of the return u/s 39 for the month of September following the end of FY to which such invoice or ~~invoice relating to such~~ debit note pertains or furnishing of the relevant annual return, whichever is earlier.

(Amended through Finance Bill 2020)

- For FY 2017-18 Last date 25/10/18 (extended upto 31/3/19)
- For FY 2018-19 Last date 20/10/19

Subject to
RODA

Sec 16(4) : A taxable person shall NOT be entitled to **take** ITC in respect of any invoice or debit note for supply of goods or services or both AFTER the DUE DATE of furnishing of the return u/s 39 for the month of September following the end of FY to which such invoice or debit note pertains or furnishing of the relevant annual return, whichever is earlier.

1. The words mentioned are →

“ITC in respect of any invoice or debit note” → that means date of invoice/debit note would be considered regardless of date of transaction.

PLANNING : Change the date of invoice & pay penalty of Sec 31 (3)

2. ITC →

“ITC is an asset”

“ITC is a SUBSTANTIVE RIGHT”

Hence, it can't
be refused by
Govt



Sec 16(4) : A taxable person shall NOT be entitled to **take ITC** in respect of any invoice or debit note for supply of goods or services or both AFTER the DUE DATE of furnishing of the return u/s 39 for the month of September following the end of FY to which such invoice or debit note pertains or furnishing of the relevant annual return, whichever is earlier.

3. GSTR 3B was NOT a return till 9th October, 2019 →

Notification 49/2019 (CT) (dated 9th October, 2019) amended Rule 61(5) of the CGST Rules providing that GSTR 3B shall be a return u/s 39 **RETROSPECTIVELY** with effect from 1st July, 2017

4. GSTR 2 →

The intent of law is to continue GSTR 2

Till date also it has been deferred. And hence automatically my eligibility to take ITC is also extended.

Gujarat HC
AAP & co

Sec 16(4) : A taxable person shall NOT be entitled to **take** ITC



5. Entitlement of ITC is based on Sec 16(2) →

4 conditions

Sec 16(2) starts with words “NOTWITHSTANDING” and hence it clearly overrules Sec 16(4)

6. The words used are “TAKE ITC” →

There are 4 words : **ELIGIBILITY, ENTITLEMENT, AVAILMENT & TAKE**

Under EXCISE laws, the word TAKE means as per BOOKS and hence Sec 16(4) deals with only ITC to be taken in Books.

It means → ITC to be **TAKEN** in Books & hence vested right to avail in GST Returns.

Sec 38-41 deals with ITC to be **taken** in Return.

**RCM liability is
NOT paid ???**

Reconciliation

What if RCM has NOT been paid for FY 17-18 or 18-19?



- Whether we can claim RCM of 17-18 which was never ever paid.....never claimed also ?
- What if we are NOT in a position to adjust the same even in next year 2018-19 ?
- Can we now claim the ITC of RCM which was NOT availed before ?
- What about other ITC of FY 2017-18 ?
- What about other ITC of FY 2018-19 or 2019-20 ?

How to reconcile ???



- Outward Liability
- Inward ITC
- How to deal with that in case of deviation between GST returns and Books of accounts ?



COVID impact

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Whether ITC to be reversed or not of the Goods destroyed due to lockdown ?

- Section 17(5)(h) of CGST Act, 2017
- Tax credit shall not be available to a registered person on goods lost, stolen, destroyed, written off or disposed of by way of gift or free samples.
- They now must reverse the input tax credit under the current law.

Alternate Solution :
Sell the goods at throw away prices & avail ITC

But what if the goods were belonging to food industry ?
Legal complications to sell stale food

Whether ITC is available on Sanitisers, Masks and other Covid Protection Items ?

- For Any Input tax credit following two conditions are primarily to be fulfilled
 - It should be used or intended to be used in the course or furtherance of business.
 - It should comply conditions laid down under Sec 16(2) and ITC claimed should be not blocked under sec 17(5)
- The term "in the course or furtherance of business" is not defined under the Act.
- But there is sufficient jurisprudence under the erstwhile regime where it had been explicitly established that the phrase in the business does NOT only include manufacturing but also all other functions associated directly or indirectly with manufacturing.
- Even maintenance of garden in the factory is squarely covered under this phrase. This has only criteria that if any activity is done for the advancement, execution or promotion of the business then it shall fall under the phrase "in the course or furtherance of business".
- As these are to provide a safe working environment to employees so as to conduct business for its execution and advancement.

Whether ITC is available on Sanitisers, Masks and other Covid Protection Items ?

- Next Condition has two sub parts. One is adherence to conditions mentioned in sec 16(2) & other is that credit shall be available unless blocked under sec 17(5)(g) or (h).
- Whether ITC on these masks, sanitisers and covid protection items are whether for personal consumption {Sec17 (5)(g)} or distributed as free gifts or samples {Sec17 (5)(h)}
- Any thing given to employees during the course of their employment shall not be treated to be used for personal consumption but for the discharge of their employment duties only and hence Sec17 (5)(g) does not block credit.
- Now, whether these items are given for free samples or gifts to employees? These are not distributed as free samples or gifts also. Therefore, {Sec17 (5)(h)} will not have any impact on the eligibility of ITC on these goods.
- So, ITC for masks, sanitisers and other Covid Items shall be available.
- What if these mask or sanitisers or protection items are given to visitors coming to workplace or factory or establishment ?
- What if these are distributed among public ?

Treatment of discount



Sec 15(3) : The value of the supply shall **not** include any discount which is given –

- (a) before or at the time of the supply if such discount has been duly recorded in the invoice issued in respect of such supply; and
- (b) after the supply has been effected, if -
 - (i) such discount is established in terms of an agreement entered into at or before the time of such supply **and** specifically linked to relevant invoices; **and**
 - (ii) ITC as is attributable to the discount on the basis of document issued by the supplier has been reversed by the recipient of the supply.

What should be done in accounts ????

Critical issues of ARREST – (FAKE INVOICE) & DENIAL OF CREDIT

The dept. has power to arrest u/s 69 for the reason stated in Sec 132 for the cognizable offences.

Sec 69 – Power to Arrest

Sec 132 – Punishment for certain offences



WHAT IS FAKE INVOICE ??

If names of the both parties, GST no, address, signature is mentioned on Invoice AND entries are recorded in books of both the Parties then it cannot be regarded as fake invoice (even payment is already made/will be made).

Only if Forged Signature = FAKE INVOICE

Suppose if supplier does NOT have a place of business at the address mentioned in invoice ???

Can the credit be denied ???

No, credit cannot be denied.

Whether Firm exists or not at address mentioned is not to be verified by the Client.....



WHETHER CREDIT CAN BE DENIED TO THE BUYER ??

NO

Besides the conditions u/s 16(2)

Rule 36(4) with practical examples

Rule 36(4)

Notification 49/2019 - Central Tax dated 9th Oct 2019

- Newly Inserted by CGST (6th Amendment) Rules, 2019
 - ITC to be availed by a registered person in respect of invoices or debit notes, the details of which have not been uploaded by the suppliers under section 37(1), shall not exceed ~~20~~ 10 % of the ELIGIBLE CREDIT AVAILABLE in respect of invoices or debit notes the details of which have been uploaded by the suppliers.
 - Amended by CGST (9th Amendment) Rules, 2019 (effective from 1st Jan 2020) (Notification 75/2019)
- PROSPECTIVE amendment
- From 9th Oct to 31st Dec it was 20%

Section 43A: Procedure for

furnishing return and availing ITC

(1) Notwithstanding anything contained in section 16(2), section 37 or section 38, every registered person shall in the returns furnished under section 39(1) verify, validate, modify or delete the details of supplies furnished by the suppliers.

(2) Notwithstanding anything contained in section 41, section 42 or section 43, the procedure for availing of ITC by the recipient and verification thereof shall be such as may be prescribed.

(3) The procedure for furnishing the details of outward supplies by the supplier on the common portal, for the purposes of availing ITC by the recipient shall be such as may be prescribed.

(4) The procedure for availing ITC in respect of outward supplies not furnished under sub-section (3) shall be such as may be prescribed and such procedure may include the maximum amount of the ITC which can be so availed, not exceeding 20% of the ITC available, on the basis of details furnished by the suppliers under the said sub-section.

(5) The amount of tax specified in the outward supplies for which the details have been furnished by the supplier under sub-section (3) shall be deemed to be the tax payable by him under the provisions of the Act.

Analysis of Rule 36(4)



ITC to be availed by a REGISTERED person in respect of invoices/debit notes, the details of which have NOT been uploaded by the suppliers under section 37(1), shall NOT exceed 10% of ELIGIBLE CREDIT AVAILABLE in respect of invoices or debit notes the details of which have been uploaded by the suppliers.

ITC of invoices or debit notes NOT uploaded by suppliers

≤

10% of ELIGIBLE credit available of invoices/Debit Notes uploaded by suppliers

Example :

ITC (as per books) is Rs. 100

ELIGIBLE ITC as per GSTR 2A is Rs. 60

ITC which can be claimed will be Rs. 66

[60 + (60 x 10%)]

PRACTICAL QUESTIONS

Example 1

Months	Eligible ITC (as per books)	ITC as appearing (in 2A)	ITC NOT in 2A
Jan	1000	700	300
Feb	800	800	
Mar	650	650	
Apr	750	750	

ITC which can be availed in 3B

Months	ITC as appearing (in 2A)	Additional 10% of 2A	Remaining ITC
(1)	(2)	(3) = 10% of (2)	(4)
Jan	700	70	$300 - 70 = 230$
Feb	800	80	$230 - 80 = 150$
Mar	650	65	$150 - 65 = 85$
Apr	750	75	$85 - 75 = 10$

PRACTICAL QUESTIONS

Example 2

Months	Eligible ITC (as per books)	ITC as appearing (in 2A)	ITC NOT in 2A
Jan	1000	600	400
Feb	800	800	
Mar	2000	2000	
Apr	750	750	

ITC which can be availed in 3B

Months	ITC as appearing (in 2A)	Additional 10% of 2A	Remaining ITC
(1)	(2)	(3) = 10% of (2)	(4)
Jan	600	60	$400 - 60 = 340$
Feb	800	80	$340 - 80 = 260$
Mar	2000	200	$260 - 200 = 60$
Apr	750	$750 \times 10\% = 75$ (subject to max of 60)	

PRACTICAL QUESTIONS

Circular No.
123/42/2019
11/11/19

Example 3

Months	Eligible ITC (as per books)	ITC as appearing (in 2A)	ITC NOT in 2A
Jan	1000	200	800
Feb	800	800	
Mar	650	650	
Apr	750	750	
May	600	600 + 800 = 1400	

(Assuming the supplier files GSTR1 by 30/4)

ITC which can be availed in 3B

Months	ITC as appearing (in 2A)	Additional 10% of 2A	Remaining ITC
(1)	(2)	(3) = 10% of (2)	(4)
Jan	200	20	800 - 20 = 780
Feb	800	80	780 - 80 = 700
Mar	650	65	700 - 65 = 635
Apr	750	75	635 - 75 = 560
May	1400	600 + 560 = 1160	NIL

Covid Relief

- Notification No. 30/2020- Central Tax, dated 03.04.2020
- To allow **cumulative application** of the condition in rule 36(4) for the months of **February, 2020 to August, 2020** in the return for **September, 2020**.

Imp points for closure of Books

Check the computation of income

Other Income

Whether any composition dealer is showing any commission income or other income ?

ITC of Repair & Insurance of motor vehicle

Liability to pay interest

Valuation issues in related parties

Payment within 180 days.....

Whether sale of L&B would be considered in Aggregate turnover ?

Imp points for closure of Books

EWB (whole 12 months)

TDS/TCS provisions (1st Oct 2018)

Sec 17(5) (1st Feb 2019)

What if ITC of 2018-19 is not availed in the same year ?

What if RCM of 2018-19 is unpaid ?

Adjustments of 2017-18 in 2018-19.....

What should be the basis for outward supply in GSTR 9 ?

Q & A

THANK YOU

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