

Supply of Duty CREDIT Scrips - Impact on Input Tax CREDIT

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Introduction:

Duty Credit Scrip (DCS) is an incentive scheme which is an export promotion benefit offered by the Government of India under the Foreign Trade Policy (FTP) 2015. Under the FTP 2015-20, MEIS/SEIS/RoDTEP Schemes intends to incentivise exports of goods manufactured in India or produced in India or exported from India. The duty credit scrips can be utilised to pay customs duties on import of inputs or goods, safeguard duty, anti-dumping duty and any other customs duty under FTP 2015-20. It cannot be utilised for payment of GST. Scrips can be freely traded and transferable i.e., Exporters who are able to use the same for their own consumption use the same and exporters who are not able to use for their own consumption, can sell the same to another person.

Impact on ITC:

Duty Credit Scrips are goods as held by many Courts and the supply of the same liable to GST. Duty Credit Scrips covered under HSN 4907 and exempted from 13.10.2017 under S. No. 122A of Notification 2/2017 – CGST (Rate). Prior, it was taxable under GST.

Section 17(2) of the CGST Act, 2017 (“CGST Act”), which provides that where the goods or services or both are used by a registered person partly for effecting taxable supplies including zero-rated supplies and partly for effecting exempt supplies, the amount of credit shall be restricted to so much of the input tax as is attributable to the said taxable supplies including zero-rated supplies. Section 17 (6) of CGST Act specifies that in such cases, procedure prescribed under CGST Rules (Rule 42 in case of inputs and input services and Rule 43 in case of Capital Goods) needs to be complied.

In recent times, Tax Departments started issuing notices to reverse input tax credit (ITC) under Rule 42 of CGST Rules along with interest. The department has raised these demands on the ground that sale of DCS being an ‘exempt’ supply require reversal of **Common ITC** availed in relation to DCS. In few cases, the officers issued

SCNs demanding that the credits relating to the purchase of **all inputs** should be reversed on the logic that the inputs/goods which have been used for exports of goods have been used for earning DCS. In other words, the scrip has come into existence due to export of goods. Therefore, anything that went into export of goods, or anything associated with the export, is also connected with the scrip.

Most of the assesseees took a stand that DCS are in the form of incentives given by the government to the taxpayers to promote exports. Accordingly, the common credit availed is primarily for the purposes of exports and profits therefrom. Moreover, DCS are traded and transferred only when the same is not utilised by the exporter or when it is available in surplus. DCS is not arising out of the inputs or input services used for exports but is arising as a government policy. For better understanding, the following scenarios can be examined:

Scenario -1	Scenario -2
When the Scrips are utilised for payment of Custom duties within the entity	When the Scrips are supplied to third party
No concept of supply	Supply of Scrips will be treated as Exempted supply under GST
As it is not a supply no question of reversal of credit	Considering supply of scrip as an exempted supply, there will be a need to comply with the provisions of Rule-42 & Rule-43

In both scenarios, the underlying facts are same i.e., the exporter exported the goods and received scrips from the Government. In the 2nd Scenario, as he is not able to utilise the scrips, it was supplied to a third party due to which the reversal of ITC under GST triggered.

The triggering point here is the supply of scrips which has nothing to do with the underlying activity which enabled him to receive such scrips. Any input credits directly in relation to such supply of scrips needs to be reversed.

In general, there will not be any specific services used for supply of such scrips and there is no need to reversal of ITC under Rule 42 or Rule 43. However, on a safer side, few assessee considered common input services like office rent, telephone expenses, auditor fees, internet expenses, CHA charges for registration of scrips at the port, etc. for reversal of ITC under Rule-42.

The author is of the opinion that though supply of Duty Credit Scrip by the exporters is an exempt supply under GST, the credit availed on inputs and input services by the exporters for making taxable supplies including zero rated supplies should not be considered as common credit on such taxable supplies and the exempted supply of DCS. Therefore, there should be no requirement of reversal of input tax credit for such exempted supply of DCS by the exporters.

The above story ends with a happy ending when the CBIC inserted a clause (d) in Explanation 1 to Rule 43 of CGST Rules, 2017. As per the explanation the aggregate value of exempt supplies shall exclude the value of supply of Duty Credit Scrips. The question of reversal of ITC will not arise for supply of DCS after this explanation. **However, one should remember that the supply of DCS is an exempted supply and should continue to disclose as exempt supply under 3.1(C) of GSTR-3B and Table-8 of GSTR-1.**

The twist in the story is that it is not clear whether the explanation added will have prospective or retrospective effect. The author is of the opinion that the explanation inserted will have retrospective effect i.e., applicable from 13.10.2017 (effective when the DCS exempted from GST). The purpose of explanation is to explain a provision. An explanation harmonizes and clears up ambiguity in the main provision.

A declaratory Statute is to remove doubts existing as to the common law or meaning or effect of any statute. Such declarative statutes were generally held to be retrospective. The said amendment is aimed at providing a remedy which the legislature initially failed to provide. Considering these, the author is of the opinion that it should be retrospectively applicable. The said interpretation confirmed by the Supreme Court in the cases of Vatika Township Private Limited 2014 (9) TMI 576 and Channan Singh Vs Smt Jai Kuar AIR 1970 SC 349.

Considering the said interpretation, assessees who are fighting the said issue at different stages like audit, SCN, appeal, etc. can take help of this amendment and contest the case.

Food for Thought:

Assessees who have already reversed the ITC can re-claim the said ITC with the intimation to department or file a refund application for wrong reversal of ITC under Any Other Refund Category. It is pertinent to mention here that the GST Council in its 47th Council meeting extended the time limit for filing refund cases. **Time period from 01.03.2020 to 28.02.2022 to be excluded** from calculation of the limitation period for filing refund claim. Assessees can take advantage of said amendment and file refund application for the credit already reversed.

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