

Input Tax Credit –New Challenges

(Finance Act, 2022)



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“high import tariffs, excises and turnover tax on domestic goods and services have **enormous cascading effects**, leading to a distorted structure of production, consumption and exports. **This problem can be effectively addressed by shifting the tax burden from production and trade to final consumption, and from savings to consumption. Accordingly, the Task Force recommended that “a well-designed destination-based value added tax on all goods and services is the most elegant method of eliminating distortions and taxing consumption.**

Task Force on Implementation of the Fiscal Responsibility and Budget Management Act, 2003

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*“In the GST, both the cascading effects of CENVAT and service tax are removed with set-off, and a continuous chain of set-off from the original producer’s point and service provider’s point up to the retailer’s level is established which reduces the burden of all cascading effects. **This is the essence of GST, and this is why GST is not simply VAT plus service tax but an improvement over the previous system of VAT and disjointed service tax”.***

Report dt 10.11.2009 of the Empowered Committee of State Finance Ministers

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“....allow credit for tax paid on all intermediate goods or services on the basis of invoices issued by the supplier. As a result, all different stages of production and distribution can be interpreted as a mere tax pass-through, and the tax will effectively ‘stick’ on final consumption within the taxing jurisdiction. **This will facilitate elimination of the cascading effect at various stages of production and distribution”.** (Para-2.16).

13th Finance Commission Report submitted on 15th December 2009

Section 16: CGST Act, 2017

Section 16(2): read with Rule 36 & 37

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

(aa) the details of the invoice or debit note referred to in clause (a) has been furnished by the supplier in the statement of outward supplies and such details have been communicated to the recipient of such invoice or debit note in the manner specified under section 37;] -NN39/2021 dt. 21.12.2021 wef 01.01.2022 ref Finance Act 2021

Contd..

(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 or, as the case may be, services—

(i) 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;

(ii) where the services are provided by the supplier to any person on the direction of and on account of such registered person.]

- ***(ba) the details of input tax credit in respect of the said supply communicated to such registered person under section 38 has not been restricted; -NN:18/2022 wef 01.10.2022-ref Finance Act, 2022.***

- (c) subject to the provisions of section 41, 1[***], the tax charged in respect of such supply has been actually paid to the Government, either in cash or through utilisation of input tax credit 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**:

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 **one hundred and eighty days** from the date of issue of invoice by the supplier, an amount equal to the input tax credit availed by the recipient shall be added to his output tax liability, along with interest thereon, in such manner as may be prescribed:

- Provided also that the recipient shall be entitled to avail of the credit of input tax on payment made by him of the amount towards the value of supply of goods or services or both along with tax payable thereon.

Notes:

No input tax credit shall be availed by a registered person in respect of any tax that has been paid in pursuance of any order where any demand has been confirmed on account of any fraud, will full misstatement or suppression of facts –rule 36(3).

(3)Depreciation availed..

(4) A registered person shall not be entitled to take input tax credit in respect of any invoice or debit note for supply of goods or services or both after the 2 [thirtieth day of November] following the end of financial year to which such invoice or 3 [***] debit note pertains or furnishing of the relevant annual return, whichever is earlier

SUMMARY of section 16(2) : To avail ITC

- RP must have in his possession Invoices, DN/CN etc. issued by a registered supplier
- The supplier, who is registered under law must have furnished details of such invoices in his GSTR-1 and must have been communicated to the recipient through GSTR-2B,
- RP must have received Goods or services or both
- ITC on above supplies should not have been restricted u/s 38
- Supplier of goods and/services must have deposited taxes on such supplies to the govt accounts, other wise recipient have to reverse the ITC with interest
- Recipient must have filed his return i.e GSTR-3B
- Recipient must have paid to supplier consideration of such goods/services with in 180 days from the invoice date
- Recipient is not entitled for ITC for any invoice after 30th Nov of next financial year.

Finance Act, 2022 :Section 104

For section 38 of the Central Goods and Services Tax Act, the following section shall be substituted, namely:—

- 38(1) The details of **outward supplies** furnished by the registered persons under sub-section (1) of section 37 and of such other supplies as may be prescribed, and an **auto-generated statement** containing the details of input tax credit shall be made available electronically to the **recipients of such supplies** in such form and manner, within such time, and **subject to such conditions and restrictions as may be prescribed**
- (2) The **auto-generated statement** under sub-section (1) shall consist of—
 - (a) details of **inward supplies** in respect of which **credit of input tax may be available** to the **recipient**; and

- b) details of **supplies in respect of which such credit cannot be availed**, whether wholly or partly, by the recipient, on account of the details of the said supplies being furnished under sub-section (1) of section 37-
- I. by any registered person **within such period of taking registration as may be prescribed**; or
 - II. by any registered person, **who has defaulted in payment of tax and where such default has continued for such period** as may be prescribed; or
 - III. by any registered person, **the output tax payable by whom in accordance with the statement of outward supplies** furnished by him under the said sub-section **during such period**, as may be prescribed, **exceeds the output tax paid by him during the said period by such limit as may be prescribed**; or

Finance Act, 2022 :Section 104

- IV. by any registered person who, during such period as may be prescribed, **has availed credit of input tax of an amount that exceeds** the **credit that can be availed by him** in accordance with clause (a), **by such limit** as may be prescribed; or
- V. by any registered person, **who has defaulted in discharging his tax liability** in accordance with **the provisions of sub-section (12) of section 49** subject to such conditions and restrictions as may be prescribed;
- VI. by such other class of persons as may be prescribed.

Summary of section 38

- Details of invoices and Debit Notes as furnished in GSTR-1 and IFF shall be available to recipient in GSTR-2B (auto generated statement) with such restriction and conditions as prescribed,
- GSTR-2B is divided into two parts i.e ITC available and ITC not available or partly available
- ITC is not available on account of:
 - I. If supplies are received from a newly registered person (up to a prescribed time limit)
 - II. Supplier has defaulted in payment of taxes for given period of time
 - III. Taxes paid in GSTR-3B are less than the taxes calculated in GSTR-1 by a prescribed limit
 - IV. Supplies have been received from a supplier who has availed ITC in GSTR-3B more than GSTR-2B by a limit prescribed,
 - V. Supplier has paid taxes from Credit Ledger more than a prescribed limit
 - VI. Any other notified person

Finance Act 2022: Section-106 wef 1.10.2022

For section 41 of the Central Goods and Services Tax Act, the following section shall be substituted, namely:

41. (1) Every registered person shall, subject to such conditions and restrictions as may be prescribed, be entitled to avail the credit of eligible input tax, as self-assessed, in his return and such amount shall be credited to his electronic credit ledger.

(2) The credit of input tax availed by a registered person under sub-section (1) in respect of such supplies of goods or services or both, **the tax payable whereon has not been paid by the supplier, shall be reversed along with applicable interest, by the said person in such manner as may be prescribed:**

Provided that where the said supplier makes payment of the tax payable in respect of the aforesaid supplies, the said registered person may re-avail the amount of credit reversed by him in such manner as may be prescribed.

Section 111 of Finance Act 2022 (Not enacted yet)

Section 50 of CGST Act.2017 –read with rule 88B

(3) Where the input tax credit has been **wrongly availed and utilised**, the registered person shall pay interest on such input tax credit **wrongly availed and utilised**, at such rate not exceeding twenty-four per cent. as may be notified by the Government, on the recommendations of the Council, and the interest shall be calculated, in such manner as may be prescribed.



*Learning continue.....
.....Thanks*