

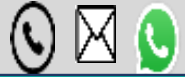


# Lawgics

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## Section 38 of CGST Act, 2017

### 38. Communication of details of inward supplies and input tax credit.

(1) The details of outward supplies furnished by 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 subsection 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
  - (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; or
  - (vi) by such other class of persons as may be prescribed.

## Our Interpretation

Section  
38(1)

**Communication of details of inward supplies and input tax credit-** This Section was substituted w.e.f. 01.10.2022 vide Notification No. 18/2022- CT dated 28.09.2022.

The details of outward supplies such as invoices, debit notes, credit notes and revised invoices furnished by registered persons in GSTR-1 shall reflect by way of an auto-generated statement containing the details of ITC to recipients of such supplies, electronically on GST portal in GSTR-2A and GSTR-2B.

Section  
38(2)

Such auto-generated ITC statement i.e., GSTR-2A/2B shall bifurcate the ITC into the following 2 parts:

- a. ITC which is available to the recipient, i.e., eligible ITC
- b. ITC which is restricted to the recipient i.e., ineligible ITC due to any one of the following reasons:

- i. GSTR-1 filed by a newly registered entity

Through this clause, the department is targeting those business entities which are newly formed and making crores of turnover from the very first month by entering into fake invoice transactions.

However, which class of registered person shall be covered under this restriction and for how much of the time from the date of obtaining registration is yet to be clarified by the department.

- ii. GSTR-1 filed by a person who has defaulted in payment of GST

This is a general practice followed by bogus registered persons. They pass the ITC of fake invoices to the recipient by entering invoice details in GSTR-1. However, they do not file their GSTR-3B and default in payment of GST. Now, supplies from such suppliers will appear as ineligible in the inward supplies report of the recipient, i.e., GSTR-2A and GSTR-2B. However, ITC shall be ineligible when such default continues for the prescribed period of time.

- iii. Output Tax payable in GSTR-1 exceeds actual payment of GST

In cases, where GST output liability as per GSTR-1 exceeds GST liability actually paid by supplier in GSTR-3B, the system will mark the supplies from such suppliers as ineligible. Output tax payable must exceed the output tax paid by such limit as may be prescribed. However, if the supplier inadvertently filed GSTR-1 with an excess amount and he filed GSTR-3B with the correct amount and paid GST according to GSTR-3B. This difference in GSTR-1 and GSTR-3B will disallow the ITC of all of his recipients.

- iv. ITC availed in excess of eligible ITC appearing in GSTR-2A/2B

Supplies from suppliers, who have availed excess ITC while filing GSTR-3B as compared to eligible ITC appearing in GSTR-2A/2B, will be marked as ineligible. While filing Table-4 of GSTR-3B, the ITC table auto-populates eligible ITC as per GSTR-2B. However, in some cases, suppliers take excess ITC as compared to what is auto-populating and the tab starts appearing red. ITC from such suppliers will be marked as ineligible.

- v. Registered persons defaulted Section 49(12) of the CGST Act

Section 49(12) of the CGST Act is a newly inserted sub-section that provides that the government may specify such a maximum portion of output tax liability that may be discharged through electronic credit ledger by a registered person or class of registered persons. Therefore, output tax liability, beyond the maximum specified limit is required to be paid in cash. However, if any supplier defaults in discharging output tax liability in accordance with Section 49(12), then ITC from such supplier shall be marked as ineligible.

Also, in each and every ground of disallowance, the word “prescribed” has been used. That means the actual time limit or actual difference limit or actual class of persons has not yet been specified in the law as on date. The government has the power to specify these limits.

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