



Lawgics

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Section 155 of CGST Act, 2017



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155. Burden of proof.

Where any person claims that he is eligible for input tax credit under this Act, the burden of proving such claim shall lie on such person.

Our Interpretation

Section
155

Sec 155 casts burden on the registered person to prove the ITC claim and it should not be taken lightly by the registered person, because if failed to prove, he will certainly lose his right of claiming ITC

The phrase 'burden of proving' has not been defined in the GST Act.

Before explaining the term, one should know what is meant by the term 'prove'. Again this is not defined in the Act, but in the interpretation clause in Sec 3 of The Indian Evidence Act, 1872, 'proved' is defined as "A fact is said to be proved when, after considering the matters before it, the Court either believes it to exist, or considers its existence so probable that a prudent man ought, under the circumstances of the particular case, to act upon the supposition that it exists."

'Burden' legally means responsibility, onus, obligation etc. Hence, 'burden of proving' means a responsibility, an obligation to prove a fact. It is the statutory duty. Whenever law requires a person to prove the existence of a fact, it is said that the 'burden of proof' lies on that person.

Burden of proof means the obligation to prove a fact. The strict meaning is that if no evidence is produced by the person on whom the burden rests, the issue must be established against him. As per Section 155, the burden lies on the person who asserts the claim of input tax credit; this claim is the principal fact to be proved. He must prove the fact that he is eligible for that ITC and the burden does not lie upon the GST officer who denies it.

Then, how to prove the claim of ITC by a person? In order to prove the claim, he has to prove certain other set of facts from which this legal right necessarily arises.

Following are the set of facts which a registered person must prove:-

- The first and foremost thing a person has to prove is that he has a genuine transaction with his supplier, resulting the supply of goods or services or both. It should not be a sham, bogus or fake transaction.
- The said supply of goods or services or both are used or intended to be used in the course or furtherance of business.
- The goods or services or both must be used by "him" only in the course or furtherance of "his own business".
- He has received the goods or services or both.
- He has paid 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 date of issue of invoice by the supplier
- He has not taken input tax credit in respect of any invoice or debit note for supply of goods or services or both after 30th November following the end of financial year to which such invoice or invoice relating to such debit note pertains or furnishing of the relevant annual return, whichever is earlier.
 - He has not taken ITC on the statutorily excluded goods or services or both u/s 17(5).

This burden of proving the claim remains on the person who claims ITC. It never shifts. As the burden of prove lies on the registered person, the burden of adducing evidence also rests on the person who claims ITC. If no evidence is produced, he will lose his right. This is termed as onus of proof. He has to produce the sufficient evidence.

Sufficiency is related to the volume of evidence and appropriateness is related to the quality of evidence. Relevance means pertinence or aptness.

Standard of proof means the degree of proof required for any fact in issue in any proceeding/litigation which is established by assessing all the evidence relevant to it. It is the degree of certainty by which an authority must be persuaded. In other words, the term “standard of proof” specifies how difficult it will be for the claimant bearing the burden of persuasion to convince the authority of the facts in its favour. Three primary standards of proof exist in common law. From lowest to highest degree of certainty required, they are:

1. preponderance of the evidence,
2. clear and convincing evidence, and
3. beyond a reasonable doubt.

Preponderance of the evidence is the standard of proof for most issues in civil litigation. In contrast, proof beyond reasonable doubt is required for conviction in criminal cases. Clear and convincing evidence represents an “intermediate standard” between preponderance of the evidence and reasonable doubt.

In the absence of a statutory enactment, a mere preponderance of the evidence is sufficient to establish the claim of ITC of the registered person. Thus, the Preponderance of Evidence Rule requires a person to persuade the authority by sufficient evidence that the existence of a fact (in this case the claim of ITC) is more probable than its non-existence. The proof is not of certainty, but of greater probability. Therefore, one has to produce sufficient documents to the satisfaction of the authority to establish his claim. Of course satisfaction is a subjective matter. So, a person requires other documentary evidences, apart from tax invoice, debit note etc. (some are statutorily provided) to prove his claim.

A little analysis of the verification mechanism by the concerned authority by examination must reveal that the standard of proof by ‘preponderance of evidence’ will be shifted to standard of proof by ‘clear and convincing evidence’. The Clear and Convincing evidence standard is a relatively difficult standard to satisfy as it requires that the evidence be “substantially” more probable to be true. In other words, evidence only needs to be greater than a 50% likelihood of being true under the preponderance of evidence standard. Under the clear and convincing standard, the evidence must be substantially greater than a 50% likelihood of being true.

But one should not forget the fraud-angle or false claim of ITC. If an authority goes for higher degree of proof than clear and convincing evidence he should not be blamed. If ITC is not proved, then the claim is a fake and a fraud is committed by the claimant. This is an offence both under GST ACT and IPC. Therefore basically what the standard of proof is required is the proof beyond a reasonable doubt and here the onus is heavy on the registered person.

The burden to lead evidence first lies on the registered person to prove the case prima facie and if any rebutting evidence is there the burden shifts on the GST authority. As the case continues, onus may shift backs to the claimant again.