

## **GST Input Tax Credit – Is it my ITC or System Given ITC**

This article is a critical analysis of Gst Input tax credit wherein my Gst ITC is now controlled by GST Portal.

First lets read, under what conditions the dealer can claim itc as envisaged originally in the Gst Act:

### **Section 16(2) of CGST act states**

(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 utilization of input tax credit admissible in respect of the said supply; and

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

The above were the conditions on inception of the Gst Law. Later on, the conditions got diluted and more conditions got added with efflux of time and as per the requirements felt by the Govt. Without elaborating the reasoning and the added new restrictions, now claiming own ITC has got many ramifications as explained below.

1. **My ITC is now dependent upon the GSTR 1 filed by my supplier** as explained with an example-

The seller sells a product to the buyer in the month of December 2020, say on 18th December 2020.

The due date to upload the Sale in the GST portal through GSTR 1 is the 11<sup>th</sup> of January 2021. If the seller uploads the GSTR 1 on or before the deadline, the ITC amount reflected in the buyer's GST portal will be the same for GSTR 2A and GSTR 2B.

However, if the seller uploads his GSTR 1 for the month of December 2020 on the 18th of February 2021. Upon listing, the ITC amount reflects the buyer's GSTR 2A of December 2020 and GSTR 2B of February 2021.

2. As per general parlance, **the Department advises Business to take a Maximum of 105% of the Eligible ITC amount as reflected in the GSTR 2A** of the portal's figure. But, GSTR 2A is not mentioned in Rule 36(4).

## THE CENTRAL GOODS AND SERVICES TAX RULES, 2017

### Chapter V Input Tax Credit

**RULE 36. Documentary requirements and conditions for claiming input tax credit.-**

(1) The input tax credit shall be availed by a registered person, including the Input Service Distributor, on the basis of any of the following documents, namely,-

(a) An invoice issued by the supplier of goods or services or both in accordance with the provisions of section 31;

(b) An invoice issued in accordance with the provisions of clause (f) of sub-section (3) of section 31, subject to the payment of tax;

(c) A debit note issued by a supplier in accordance with the provisions of section 34;

(d) A bill of entry or any similar document prescribed under the Customs Act, 1962 or rules made thereunder for the assessment of integrated tax on imports;

(e) An Input Service Distributor invoice or Input Service Distributor credit note or any document issued by an Input Service Distributor in accordance with the provisions of sub-rule (1) of rule 54.

(2) Input tax credit shall be availed by a registered person only if all the applicable particulars as specified in the provisions of Chapter VI are contained in the said document, and the relevant information, as contained in the said document, is furnished in FORM GSTR-2 by such person.

[Provided that if the said document does not contain all the specified particulars but contains the details of the amount of tax charged, description of goods or services, total value of supply of goods or services or both, GSTIN of the supplier and recipient and place of supply in case of inter-State supply, input tax credit may be availed by such registered person.]

(3) 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, willful misstatement or suppression of facts.

[(4) Input tax credit to be availed by a registered person in respect of invoices or debit notes, the details of which have not been [furnished] by the suppliers under sub-section (1) of section 37 [in FORM GSTR-1 or using the invoice furnishing facility], shall not exceed [5 per cent.] of the eligible credit available in respect of invoices or debit notes the details of which have been [furnished] by the suppliers under sub-section (1) of section 37 [in FORM GSTR-1 or using the invoice furnishing facility].]

[Provided that the said condition shall apply cumulatively for the period February, March, April, May, June, July and August, 2020 and the return in FORM GSTR-3B for the tax period September, 2020 shall be furnished with the cumulative adjustment of input tax credit for the said months in accordance with the condition above.]

## THE CENTRAL GOODS AND SERVICES TAX RULES, 2017

### Chapter VIII

#### Returns

**RULE [60. Form and manner of ascertaining details of inward supplies.-**

**(1)** The details of outward supplies furnished by the supplier in FORM GSTR-1 or using the IFF shall be made available electronically to the concerned registered persons (recipients) in Part A of FORM GSTR-2A, in FORM GSTR-4A and in FORM GSTR-6A through the common portal, as the case may be.

**(2)** The details of invoices furnished by an non-resident taxable person in his return in FORM GSTR-5 under rule 63 shall be made available to the recipient of credit in Part A of FORM GSTR 2A electronically through the common portal.

**(3)** The details of invoices furnished by an Input Service Distributor in his return in FORM GSTR-6 under rule 65 shall be made available to the recipient of credit in Part B of FORM GSTR 2A electronically through the common portal.

**(4)** The details of tax deducted at source furnished by the deductor under sub-section (3) of section 39 in FORM GSTR-7 shall be made available to the deductee in Part C of FORM GSTR-2A electronically through the common portal

(5) The details of tax collected at source furnished by an e-commerce operator under section 52 in FORM GSTR-8 shall be made available to the concerned person in Part C of FORM GSTR 2A electronically through the common portal.

(6) The details of the integrated tax paid on the import of goods or goods brought in domestic Tariff Area from Special Economic Zone unit or a Special Economic Zone developer on a bill of entry shall be made available in Part D of FORM GSTR- 2A electronically through the common portal.

(7) An auto-drafted statement containing the details of input tax credit shall be made available to the registered person in FORM GSTR-2B, for every month, electronically through the common portal, and shall consist of -

(i) the details of outward supplies furnished by his supplier, other than a supplier required to furnish return for every quarter under proviso to sub-section (1) of section 39, in FORM GSTR-1, between the day immediately after the due date of furnishing of FORM GSTR-1 for the previous month to the due date of furnishing of FORM GSTR-1 for the month;

**(ii)** the details of invoices furnished by a non-resident taxable person in FORM GSTR-5 and details of invoices furnished by an Input Service Distributor in his return in FORM GSTR-6 and details of outward supplies furnished by his supplier, required to furnish return for every quarter under proviso to sub-section (1) of section 39, in FORM GSTR-1 or using the IFF, as the case may be,-

**(a)** for the first month of the quarter, between the day immediately after the due date of furnishing of FORM GSTR-1 for the preceding quarter to the due date of furnishing details using the IFF for the first month of the quarter;

**(b)** for the second month of the quarter, between the day immediately after the due date of furnishing details using the IFF for the first month of the quarter to the due date of furnishing details using the IFF for the second month of the quarter;

**(c)** for the third month of the quarter, between the day immediately after the due date of furnishing of details using the IFF for the second month of the quarter to the due date of furnishing of FORM GSTR-1 for the quarter;

**(iii)** the details of the integrated tax paid on the import of goods or goods brought in the domestic Tariff Area from Special Economic Zone unit or a Special Economic Zone developer on a bill of entry in the month.

(8) The Statement in FORM GSTR-2B for every month shall be made available to the registered person,-

(i) for the first and second month of a quarter, a day after the due date of furnishing of details of outward supplies for the said month, in the IFF by a registered person required to furnish return for every quarter under proviso to sub-section (1) of section 39, or in FORM GSTR-1 by a registered person, other than those required to furnish return for every quarter under proviso to sub-section (1) of section 39, whichever is later;

(ii) in the third month of the quarter, a day after the due date of furnishing of details of outward supplies for the said month, in FORM GSTR-1 by a registered person required to furnish return for every quarter under proviso to sub-section (1) of section 39.]

**3. Now, the problem with this scenario is that GSTR 3B automatically populates the figure of GSTR 2B and not of GSTR 2A.**

Let's assume that a trader is filing his GSTR 3B on the 18th of the month and on that day where the amount reflected in GSTR 2B has 10 Lakhs, and the amount in GSTR 2A reflects 15 Lakhs.

The maximum amount as per the GSTR 3B that you can avail is 105% of 10 Lakhs, i.e., Rs. 10.5 Lakhs.

If you avail more than that amount, which you actually can as per the figure according to GSTR 2A; A red mark will start appearing in your account, which is an indication of a problem.

This invites GST Assessment / Audits / Investigations all when you have committed no mistake!

This is a significant flaw in the system as it is common for sellers in almost every Industry to list the Sales after a month or so. It becomes really difficult for the buyers to avail ITC in these cases.

4. The **GSTN won't allow you to avail the due ITC**, and you would either have to take additional capital as a loan to pay the Taxes or wait for the next month to may get a chance to avail the due ITC.

And if you avail the ITC based on GSTR 2A, you will have to pay money for litigations caused due to Assessment / Audits / Investigations.

5. Now the confusion grows muti fold. **Rule 36 gives an impression the ITC should be reconciled with GSTR 2A, while Section 16 states that the ITC should be based on the invoice and satisfaction of other conditions.**

6. Now we have a **Reply to Tweet from CBIC India** which states that Input tax credit is required to be availed based on details available in **FORM GSTR-2B**

7. The crux of the above confusion is that Since the **GSTN/ Gst Portal has my pre-filled data**, it is directing the dealer to do a certain task or to act in a certain manner and not to go beyond the boundaries. Otherwise, the red flag raises the confusions and the BP level of the dealer or his representative.

8. Doesn't point no. 7 sound like a Ransomware.

What is Ransomware: **Ransomware** is malicious software that infects your computer and displays messages demanding a fee to be paid in order for your system to work again. This class of malware is a criminal moneymaking scheme that can be installed through deceptive links in an email message, instant message or website. It has the **ability to lock a computer screen or encrypt important, predetermined files with a password.**

**Conclusion:**

It seems the Govt is also in two minds whether to allow Gst ITC as per Gst 2A or Gst 2B or as per Section 16. Now, when the Govt is in two minds, the businesses are in multiple minds and the plethora of confusions and queries follow giving an impression that my own itc is now controlled by an external system which has now gain control over my data.

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