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## **ENTITLEMENT OF A TAXPAYER IS LIMITED TO THE INPUT TAX CREDIT REFLECTING IN FORM GSTR-2B: CBIC**

The Central Board of Indirect Taxes and Customs (**'Board'**), *vide Notification No. 39/2021-Central Tax<sup>1</sup>* has notified new provisions under the Finance Act, 2021 (**"the Act"**), seeking to amend various provisions of the Central Goods and Services Act, 2017 (**"CGST Act"**). These provisions, namely Section 108, 109, 115, 116 and 120, have come into force from 1<sup>st</sup> January 2022. The Board, *inter-alia* has clarified that any claim of input tax credit (**"ITC"**) will be allowed only if the same is reflected in FORM GSTR-2B of a taxpayer. The scope of this GST café is limited to this particular aspect of the abovementioned notification.

### **Background:**

- Section 37 of the CGST Act prescribes that a monthly or a quarterly return shall be filed for all the outward supplies made by any registered supplier under GST. This return shall include details of invoices, debit notes, credit notes and revised invoices issued in relation to all outward supplies made by such supplier during any tax period. The form and manner in which the details of the outward supply shall be furnished are outlined under Rule 59 of the Central Goods and Services Rules, 2017 (**"the Rules"**). According to the abovementioned rule, all the relevant details of the outward supply shall be furnished by the supplier under FORM GSTR-1.
- Section 41 of the CGST Act entitles taxpayers to provisionally take the credit of eligible input tax, as self-assessed, in his return and such amount shall be credited on a provisional basis to the electronic credit ledger.
- Section 42(1)(a) of the CGST Act prescribes that the details of every inward supply furnished by the recipient shall match with the corresponding details of outward supply furnished by the supplier in his valid return for the same tax period or any preceding tax period. Therefore, the provisional credit becomes final after matching and the reversal and reclaim of ITC was carried out in the manner laid down under Section 42 of the CGST Act.
- According to Rule 60 of the rules, the details provided in FORM GSTR-1 shall be auto-populated and made available electronically to the recipient, for matching purposes, in FORM GSTR-2A. It is a purchase centric dynamic tax return automatically generated on the portal. Any purchases made by the taxpayer, as reflected in the seller's FORM GSTR-1 gets auto-populated in the buyer's FORM GSTR-2A.
- FORM GSTR-2B is a system-generated (auto-populated) statement for ITC. This form reflects the ITC for a month, on the basis of the outward taxable supplies made by a taxpayer. Since FORM GSTR-2A is a dynamic return, there is no due date as per which the credit should be claimed. On the other hand, FORM GSTR-2B gets auto-populated on the 14<sup>th</sup> of every month,

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<sup>1</sup> F. No. CBIC-20006/26/2021-GST dated 21<sup>st</sup> December, 2021

and hence reflects the ITC as per invoices furnished by the supplier of the taxpayer in their FORM GSTR-1 for the particular month.

- Section 16(1) of the CGST Act entitles every registered taxpayer to the credit of tax charged on the course of business, commonly referred to as the ITC whereas section 16(2) of the CGST Act lays down the basic conditions to seek ITC by a registered taxpayer.
- Earlier, as per Rule 36(4) of the CGST Rules, 2017, the taxpayers could claim provisional credit up to 5% of the ITC of the amount reflected in FORM GSTR 2B to file returns in FORM GSTR-1 towards outward taxable supplies made.

**Overview of the amendment:**

- The Board has amended Rule 36(4) of the CGST Rules to now provide that the recipient would not be able to take any ITC if the same is not appearing in his FORM GSTR-2B. Earlier this was limited to 5% of the amount reflecting in FORM GSTR-2A. Therefore, the condition of the cut off date for computing eligible ITC being the due date of filing FORM GSTR 1 has been brought strictly in force by way of the above amendment.
- Section 109 of the Act amends section 16 by adding another sub-clause, namely 16(aa) making it mandatory for a supplier to furnish the details of the invoice or debit note in FORM GSTR-1. Furthermore, ITC can only be claimed by a supplier once the details of such invoice or debit note have been communicated to the recipient.

**VA Comments:**

- The above amendment has in effect nullified the effect of Rule 36(4) which prescribed a provisional credit up to 5% of the ITC reflected in FORM GSTR 2A. This means that the eligible ITC of the taxpayer will be affected because of the invoices not uploaded by the supplier of such taxpayer in their FORM GSTR-1. The concept of provisional ITC was brought into effect *vide Notification No. 49/2019-Central Tax*<sup>2</sup>. Per the said notification, the Board introduced Rule 36(4) into the Rules enabling a taxpayer to avail ITC up-to 20% of the amount of the invoices not furnished by their supplier under FORM GSTR-1 (and hence not reflecting in the taxpayer's FORM GSTR-2A). Pursuant to the 38<sup>th</sup> GST Council meeting, such limit was restricted by the Board to 10% with effect from 1<sup>st</sup> January, 2020. Therefore, this amendment has wide ramifications on the working capital of the taxpayer, thereby inducing stricter compliance on the part of the taxpayers.
- Furthermore, the restriction imposed as per the amended Rule 36(4) is likely to induce a due diligence check from the buyers to the sellers. However, the restriction, as introduced after almost four and a half years of introduction of GST regime, seems to disrupt the seamless flow of credit, thereby refuting one of the objectives of introduction of GST.

<sup>2</sup> F. No. 20/06/07/2019-GST dated 9<sup>th</sup> October, 2019

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- This amendment in effect is in contradiction to the observation of the GST Council in its 27<sup>th</sup> meeting<sup>3</sup> whereby it was observed that the automatic reversal of ITC in case of default of payment of seller should be restricted to exceptional situations like missing dealer, closure of business by the supplier etc. Furthermore, the Hon'ble Supreme Court while dismissing a Special Leave Petition against the decision of Hon'ble Delhi High Court in *Arise India Ltd. V. Commissioner of Trade and Taxes*<sup>4</sup> upheld the position that ITC should be restricted only with respect to the sellers failing to deposit the tax collected by them to the government. Any condition allowing the bona-fide taxpayers to suffer at the hands of the non-compliant sellers will refute the objective of intelligible differentia enshrined under Article 14 of the Constitution of India. Therefore, even though the objective of the above amendment was to reduce litigations in respect of numerous Writ Petitions filed for challenging the provisional credit available to the taxpayers, further litigations are bound to happen challenging the above amendment.

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<sup>3</sup> Press Release of the 27th GST Council Meeting dated May 04, 2018.

<sup>4</sup> TS-314-HC-2017(Del)-VAT