

GOODS & SERVICES TAX



LATEST CONTROVERSIES IN GST

- Section 50 (1) – Interest on Gross Liability
- Rule 36(4) – Restriction of ITC based on 2A - upto maximum 110% of the eligible ITC as per 2A
- Section 16 (4) – Ineligibility of ITC where the return was filed after the Due date of return for September month of next Financial Year

SEC 50 – INTEREST ON GROSS LIABILITY

SECTION 50 – INTEREST

- **50. (1)** Every person who is liable to pay tax in accordance with the provisions of this Act or the rules made thereunder, but fails to pay the tax or any part thereof to the Government within the period prescribed, shall for the period for which the tax or any part thereof remains unpaid, pay, on his own, interest at such rate, not exceeding eighteen per cent., as may be notified by the Government on the recommendations of the Council.
- (2) The interest under sub-section (1) shall be calculated, in such manner as may be prescribed, from the day succeeding the day on which such tax was due to be paid.
- (3) A taxable person who makes an undue or excess claim of input tax credit under sub-section (10) of section 42 or undue or excess reduction in output tax liability under sub-section (10) of section 43, shall pay interest on such undue or excess claim or on such undue or excess reduction, as the case may be, at such rate not exceeding twenty-four per cent., as may be notified by the Government on the recommendations of the Council.

PAYMENT OF TAX – SEC 49

- (3) The amount available in the electronic cash ledger may be used for making any payment towards tax, interest, penalty, fees or any other amount payable under the provisions of this Act or the rules made thereunder in such manner and subject to such conditions and within such time as may be prescribed.
- (4) The amount available in the electronic credit ledger may be used for making any payment towards output tax under this Act or under the Integrated Goods and Services Tax Act in such manner and subject to such conditions and within such time as may be prescribed.

DUE DATE – SEC 39

- 39 (7) Every registered person, who is required to furnish a return under sub-section (1) or sub-section (2) or sub-section (3) or sub-section (5), shall pay to the Government the tax due as per such return not later than the last date on which he is required to furnish such return.

RECOVERY OF INTEREST - 75

- 75 (12) Notwithstanding anything contained in section 73 or section 74, where any amount of self-assessed tax in accordance with a return furnished under section 39 remains unpaid, either wholly or partly, or any amount of interest payable on such tax remains unpaid, the same shall be recovered under the provisions of section 79.

DEFENCES AVAILABLE

- Procedure as required under Sec 50(2) is not yet prescribed
- Procedure was prescribed only once – Notification no 23/2017 – That time it was prescribed on net tax liability only.
- Decision of GST Council in 31st Meeting
 - **Agenda 7(xx) -Proposal for amendment of Section 50 of CGST Act, 2017 to allow payment of interest on net cash liability**
 - **Part payment permission was not given to the assesseees**
- Proposed Amendment vide Finance Bill 2019 that requires interest only on net cash liability
- Input Tax Credit is as good as tax paid
- Levy of Interest is Compensatory in Nature
- Recent Madras High court decision in Refex Industries Ltd – the amendment is merely clarificatory in nature thus applicable retrospectively

NOTIFICATION 23/2017 - CT

	2017		before the filing of FORM GSTR-3B; (iii) where the amount of tax payable under the said Act for the month of July, 2017, as detailed in the return furnished in FORM GSTR-3B, exceeds the amount of tax deposited in cash as per item (i), the registered person shall pay such excess amount in cash in accordance with the provisions of rule 87 of the said Rules on or before 28 th August, 2017 along with the applicable interest calculated from the 21 st day of August, 2017 till the date of such deposit.
3.	Any other registered person	20 th August, 2017	...

2. Payment of taxes for discharge of tax liability as per GSTR-3B: Every registered person furnishing the return in FORM GSTR-3B shall, subject to the provisions of section 49 of the said Act, discharge his liability towards tax, interest, penalty, fees or any other amount payable under the Act by debiting the electronic cash ledger or electronic credit ledger.

Explanation.- For the purposes of this notification, the expression-

- (i) “Registered person” means the person required to file return under sub-section (1) of section 39 of the said Act;
- (ii) “tax payable under the said Act” means the difference between the tax payable for the month of July, 2017 as detailed in the return furnished in FORM GSTR-3B and the amount of input tax credit entitled to for the month of July, 2017 under Chapter V and section 140 of the said Act read with the rules made thereunder.

PART PAYMENT UNDER GST

- *Section 49(2) of the CGST Act provides that the input tax credit as self-assessed in the return (not necessarily be a valid return) of a registered person shall be credited to his electronic credit ledger.*
- *Section 49(3) and 49(4) of the CGST Act provides that the amount available in the electronic cash ledger may be used for payment towards tax, interest, penalty, fees or any other amount whereas the amount available in the electronic credit ledger may be used for payment towards output tax. The term “tax dues” has been defined, as per Explanation (b) to section 49 of the CGST Act so as to mean the tax payable under the CGST Act and does not include interest, fee and penalty.*
- *Section 39(7) of the CGST Act provides that the tax payable as per the return is required to be paid not later than the last date on which the return is required to be furnished.*
- *Section 2(117) of the CGST Act provides that a valid return means a return furnished under section 39(1) of the CGST Act on which self-assessed tax has been paid in full.*

PROPOSED AMENDMENT – FINANCE BILL 2019

In section 50 of the Central Goods and Services Tax Act, in sub-section (1), the following proviso shall be inserted, namely:—

- “Provided that the interest on tax payable in respect of supplies made during a tax period and declared in the return for the said period furnished after the due date in accordance with the provisions of section 39, except where such return is furnished after commencement of any proceedings under section 73 or section 74 in respect of the said period, shall be levied on that portion of the tax that is paid by debiting the electronic cash ledger.”.

INPUT TAX CREDIT IS AS GOOD AS TAX PAID

EICHER MOTORS LTD. Versus UNION OF INDIA [1999 (106) E.L.T. 3 (S.C.)]

- [para 5]
- Tax credit - Modvat credit - Provision for facility of credit is as good as tax paid till tax is adjusted on future goods on the basis of the several commitments which would have been made by the assessee concerned.

LEVY OF INTEREST IS COMPENSATORY IN NATURE

- Associated Cement Co. Ltd. Vs. Commercial Tax Officer, Kota and Others (1981) 048 STC 0466 (SC)]
- Indodan Industries Ltd. V. State of U.P. and others [2010] 27VST 1(SC), in reference to the Central Sales Tax Act, 1956
- Prakash Cotton Mills P. Ltd v. CIT (1993) 201 ITR 684 (SC)
- Mahalakshmi Sugar Mills Co. v. Commissioner of Incometax, Delhi, (1980) 123 ITR 429

**SEC 16(4) – NON ELIGIBILITY OF ITC
WHERE GSTR-3B IS FILED AFTER DUE
DATE OF SEPTEMBER MONTH OF NEXT
FY**

SECTION-16(4)-NON ALLOWANCE OF ITC FOR RETURN FILED AFTER SEPTEMBER

- (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 due date of furnishing of the return under section 39 for the month of September 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
- Amended by Finance Bill, 2020-

In section 16 of the Central Goods and Services Tax Act, in sub-section (4), the words “invoice relating to such” shall be omitted.

EFFECT

- ITC is being disallowed for all the cases where the returns for FY 2017-18 were filed after 31.03.2019.
- ITC is being disallowed for all the cases where the returns for 2018-19 where the returns were filed after 20th October, 2020.

DEFENCES AVAILABLE

- GSTR-3B was not a return u/s 39 - It was made a return u/s 39 vide notification no 49/2019 dated 09.10.2019 w.r.e.f. 01.07.2017
- Sec 16 is a section for eligibility and entitlement only – It has no relevance with taking of credit in a return. For this the separate sections are there (38, 39 and 41)
- Claim of credit in a return is governed by Sec 41 also which is a self assessment provision
- Input Tax Credit is a substantive right
 - Input tax credit is a substantive right – SIDDHARTH ENTERPRISES 2019 (29) G.S.T.L. 664 (Guj.)
 - A substantive right cannot be denied because of procedural irregularities - *Osram Surya (P) Ltd. v. Commissioner of Central Excise (supra)*
 - Input Tax Credit is Indefeasible and substantive right - DAI ICHI KARKARIA LTD. 1999 (112) E.L.T. 353 (S.C.)
- Late Fee is payable for delayed filing of GSTR-3B

GSTR-3B WAS NOT A RETURN U/S 39

- AAP & Co.Vs Union of India [2019 (26) G.S.T.L. 481 (Guj.)]
- Returns under GST law - Monthly return - Scope of - Monthly return GSTR-3B is not a substitute of monthly return GSTR-3 having statutory backing of Section 39(1) of Central Goods and Services Tax Act, 2017 read with Rule 61(1) of Central Goods and Services Tax Rules, 2017
- Amended by notfn 49/2019 w.r.e.f. 01.07.2017
- Rule 61(5) Where the time limit for furnishing of details in **FORM GSTR-1** under section 37 or in **FORM GSTR-2** under section 38 has been extended, the return specified in sub-section (1) of section 39 shall, in such manner and subject to such conditions as the Commissioner may, by notification, specify, be furnished in **FORM GSTR-3B** electronically through the common portal, either directly or through a Facilitation Centre notified by the Commissioner:
- Provided that where a return in **FORM GSTR-3B** is required to be furnished by a person referred to in sub-rule (1) then such person shall not be required to furnish the return in **FORM GSTR-3.**]

SEC 16 IS FOR ELIGIBILITY ONLY- FOR RETURNS – SEC 38 AND 41

- Sec 38 (5) Any registered person, who has furnished the details under sub-section (2) for any tax period and which have remained unmatched under section 42 or section 43, shall, upon discovery of any error or omission therein, rectify such error or omission in the tax period during which such error or omission is noticed in such manner as may be prescribed, and shall pay the tax and interest, if any, in case there is a short payment of tax on account of such error or omission, in the return to be furnished for such tax period:
- Provided that no rectification of error or omission in respect of the details furnished under sub-section (2) shall be allowed after furnishing of the return under section 39 for the month of September following the end of the financial year to which such details pertain, or furnishing of the relevant annual return, whichever is earlier

SEC-41 – SELF ASSESSMENT

- **41. Claim of input tax credit and provisional acceptance thereof.**
- (1) Every registered person shall, subject to such conditions and restrictions as may be prescribed, be entitled to take the credit of eligible input tax, as self-assessed, in his return and such amount shall be credited on a provisional basis to his electronic credit ledger.
- (2) The credit referred to in sub-section (1) shall be utilised only for payment of self assessed output tax as per the return referred to in the said sub-section.

RULE 36(4) – THE 10% RULE OF RESTRICTING THE ITC

RULE 36 (4)

- [(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 uploaded by the suppliers under sub-section (1) of section 37, shall not exceed [10 per cent] of the eligible credit available in respect of invoices or debit notes the details of which have been uploaded by the suppliers under sub-section (1) of section 37.

EFFECT

- ITC is not restricted to the extent of 110% of ITC eligible as per 2A

Problems

- ITC in respect of quarterly filers of GSTR-1
- Reduction of refund amount and thereafter non eligibility of previous months' credits which were uploaded later. Identification of Invoices at the time of filing of refunds.
- Regular updation of GSTR-2A data
- Date of taking GSTR-2A balance. 11th or 20th or Date of filing???
- How to maintain books of accounts?
- Incorrect filing by the supplier.
- Huge data

DEFENCES AVAILABLE

- Rule 36(4) is excessive delegation – When Sec 43 A is already there which is yet to be notified
- Quest Merchandising India Pvt. Ltd. And Ors. vs. Government of NCT of Delhi and Ors., W.P. (C) 4046/2013 (also Arise India judgement Delhi HC)
- GSTR-2 is not yet available – It is being forever extended
- Input Tax Credit is a substantive right
 - Input tax credit is a substantive right – SIDDHARTH ENTERPRISES 2019 (29) G.S.T.L. 664 (Guj.)
 - A substantive right cannot be denied because of procedural irregularities - *Osram Surya (P) Ltd. v. Commissioner of Central Excise* (supra)
 - Input Tax Credit is Indefeasible and substantive right - DAI ICHI KARKARIA LTD. 1999 (112) E.L.T. 353 (S.C.)
- Late filing is allowed to Supplier by paying a mere late fees of Rs. 100/- per day

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- Provided that where a return in **FORM GSTR-3B** is required to be furnished by a person referred to in sub-rule (1) then such person shall not be required to furnish the return in **FORM GSTR-3.**]

THANK YOU

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