

DECODING THE CHANGES IN THE CONDITIONS FOR CLAIMING INPUT TAX CREDIT (EFFECTIVE FROM 1ST OCT 2022)



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Input Tax Credit means claiming the credit of the GST paid on purchase of Goods and Services which are used for the furtherance of business. The Mechanism of Input Tax Credit is the backbone of GST and is one of the most important reasons for the introduction of GST.

As GST is a single tax levied across India (right from manufacture of goods till it reaches the end customer), the chain does not get broken and everybody is able to take benefit of the same and there is seamless flow of credit. Uninterrupted and seamless chain of input tax credit (herein after referred to as, "ITC") is one of the key features of Goods and Services Tax.

Let us now analyse Section 16 of the Central Goods and Services Tax Act, 2017 which deals with eligibility and conditions for claiming of ITC. Section 16(2) provides for conditions which need to be complied with while claiming ITC.

Extract of Section 16(2) is as follows-

- (2) Not with standing 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;
- [(aa) the details of the invoice or debit note referred to in clause (a) has been furnished by the supplier in the statement of outward supplies and such details have been communicated to the recipient of such invoice or debit note in the manner specified under section 37;] *Inserted by The Finance Act, 2021 (No.13 of 2021)- Brought into force w.e.f. 01st January, 2022*
- (b) he has received the goods or services or both.
- (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 there turn under section 39:

Clause (be) inserted in section 16(2) to provide additional condition for claiming ITC by a buyer - ITC with respect to an invoice can be availed by buyer only if such ITC has not been restricted in the details communicated to buyer in the form of auto generated statement (i.e., GSTR-2B) u/s 38 of CGST Act. [Brought into force w.e.f. 01st October, 2022]

Now let us understand Section 38.

Before 01.10.2022, Section 38 of the CGST Act dealt with furnishing of details of Inward supply and prescribed for filing of GSTR2 containing detail of inward supplies on which the tax payer is claiming ITC. However, this mechanism could never be implemented since the implementation of GST law.

Now by virtue of this amendment, entire Section 38 is substituted w.e.f 1.10.2022 with a new section which provides for 'Communication of details of inward supplies and Input Tax credit'. The name itself makes it clear that the earlier mechanism of filing of GSTR2 is now scrapped.

Section 38 has been substituted to provide that now, the auto generated statement of ITC (i.e.,GSTR-2B) shall consist of two below major components.

- (a) Details of ITC which may be availed; and
- (b) Details of ITC which cannot be availed in respect of invoices furnished u/s37(1)

Now let us analyse the condition when ITC cannot be availed as mentioned in Section 38–

- Supplies made by a supplier who has obtained new GST registration upto such period as may be prescribed.
- Supplies by a registered person who has defaulted in payment of GST for a specified period of time. This entry covers those suppliers who have filed their GSTR-1 by the specified due date but failed to file GSTR-3B.
- Supplies by a registered person whose output tax payable as per GSTR-1 exceeds the output tax paid by him in GSTR-3B by such limit as may be prescribed
- Supplies by suppliers who have availed ITC in GSTR-3B in excess of eligible ITC.
- The supplier has defaulted in discharging his tax liability as per Section 49(12). As per newly inserted Section 49(12) of the CGST Act, the Government may specify the such maximum proportion of output tax liability that may be discharged through the electronic credit ledger by a registered person or a class of registered persons. Therefore, liability in excess of the specified limit is required to be paid in cash.
- Such other class of persons as may be prescribed.

The Main intention behind this amendment is to break the fraudulent ITC chain of dealers causing great loss to the nation. However, this amendment is going to bring lot of difficulties to genuine buyers also where their supplier does not discharge his GST liability properly.

In a number of judgments, it has been held that recipient cannot be held responsible for the default of supplier in paying his taxes, if the transaction is a genuine one. So, the proposed amendment shall cover these cases also and shall have adverse effect on genuine buyers/recipients.

Extension of time limit for availing ITC

Section 16(4) amended to provide time limit for availing ITC in respect of invoices or debit note pertaining to a Financial Year upto 30th November of the following financial year.

Earlier the time limit was due date of September month i.e., 20th October / 22nd October / 24th October as the case may be.

Department vide Press Release dated 4th October 2022 have clarified that the above extension of time limit shall apply to ITC to be claimed for FY 2021-22 as well. In other words, ITC of FY 21-22 can be claimed in the returns filed upto 30th November 2022.

Restriction in maximum utilization of ITC

There has been Rule 86B inserted in CGST rules for a while. This rule was inserted and made effective from 01.01.2021. As per this rule a tax payer shall not utilize ITC towards payment of its Output tax liability in excess of 99% of the output tax liability. This restriction was subject to certain exemptions. There was a dispute over the validity of this provision since implementation, as there was no section in the CGST Act which allowed such restriction.

Now an amendment has been made to sub section (12) to Section 49 of the CGST Act. The newly inserted sub section (12) provides that the Government shall specify the maximum proportion of output tax liability which may be discharged through utilization of ITC.

Government has time and again been making changes in various provisions for claiming ITC. The intention is to stop the fraudulent dealers from taking benefits under GST, however some of these restrictions/amendments would affect genuine dealers as well.

