



GST – ON BEAT, OFF BEAT AND BACK BEAT

INVOICE – 2 WILFUL INVOICE ERRORS

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Apart from Place and Time of supply to decide Value and Actual Invoice to be issued, the problem of Wilful Invoice Error is found to be hurting GST collections too. As we know, one of the prime motives of GST was Invoice matching for input credit however the original idea of the same is yet to be implemented in its original form. Even today E-invoicing is deferred till September 2020 and even after its successful implementation it will cover assesses above Rs. 100 Cr turnover which may not be major chunk. Wilful Invoicing errors are of-course with intention to fraud and having multiple purposes to surpass legal provisions. It's clearly a case of tax evasion and not genuine tax planning. On the other hand in GST Law there are provisions for corrections in Invoices and genuine assesses are correcting it too. Let's see instances of Wilful Invoicing errors falling under violation of Section 31.

1. **Invoice is issued with Serial Number of Other Assesse:** This is a typical wilful error wherein offence is committed to the extent of tracking systems of Tax Payers. Such Frauds are done taking advantage of Quarterly Return Assesses in all cases. After a return is filed or when Bonafied Tax Payer tries to file the return such frauds comes into light or may be till that time Credit is taken and used as buffer for Working Capital too. Very rare cases of such wilful errors but still there are possibilities of the same.
2. **Issues invoices without actual supply of Goods or Services:** Thousands and Thousands of Crores of Rupee Frauds have unearthed by Department on such modus operandi. There are several cases wherein without actual moment of goods or supply of services invoices are issued and credit is availed.
 - a. **Company L Case:** In this case pending before Hon. Rajastan High Court it is revealed that from July, 2017, the company 'L' has not done any business and fake sale purchase bills were prepared and only trading activities were shown. All the trading activities were conducted without any banking transaction or movement of goods. It was also revealed from the statements that input tax credit was wrongly claimed to the tune of more than Rs. 40 crores and 53 lakhs by the company 'L'. From investigation, it is also revealed that no manufacturing process was conducted by the company 'L' and CR Sheet/Coils and Iron Sheets were not used in the manufacturing process. It was also revealed that five companies are related companies to the company 'L' and the total input credit wrongly claimed by the company and its sister concerns is to the tune of Rs. 328 crores. From searches, it was revealed that the company 'L' had taken input tax credit on bills issued by other concerns, whereas CR Sheet/Coils and iron sheets mentioned in the bills never reached the unit. The Company 'L' issued exit pass even when it had not received the goods. The company had thus shown fake purchase of Rs. 225.90 crores and had wrongly claimed input credit to the tune of Rs. 40.53 crores. In the instant case, the petitioner has not disputed the factum of fraudulent availing of input tax on basis of fake invoices.
 - b. **Group Companies fakes Invoices Case as before Hon. Karnataka High Court:** Companies of 'A' group were indulging in continuous issuance of fake invoices without actual supply of goods with an intention to enable them fraudulently avail the input tax credit. It was case of the prosecution that invoices were issued and circulated among the group companies till they reached back to the originating companies, i.e, 'A' groups without actual movement of goods thereby transferring the irregular input credit to the originating companies for payment of GST and sales tax. It was further alleged that the act was an offence and it was criminal in nature. On the basis of the same, complaint was registered.
 - c. **Fake Invoices and Cash Transactions:** a Professional Accountant, was arraigned as an accused on allegation that he in connivance with other accused persons, had allegedly issued GST invoices without any supply of goods to buyers on commission basis causing loss of more than Rs. 98 crores - Thus, petitioner was arrested wherein it was admitted that invoices were issued for goods and service but there was no movement/supply of goods or services in cases of bills

issued by him - It was further found that manner of payment against invoices was RTGS, however, RTGS given by parties went to another account and against said RTGS they received cash which was returned after deducting commission. Such type of Modus Operandi was found in one of the pending cases before Hon. West Bengal High Court in recent times. Hence in invoice frauds it was coupled with Cash Transactions also.

3. **Goods and services are supplied to our own group company by over and under valuation of supplies:** It was found in some cases that to utilize credit in same group company invoices prices were inflated and unused credit was utilized. E.g. Company M & Company N are related parties. Company N is primarily in losses due to change in business dynamics. There was lot of input tax credit pending in company N along with stock which is obsolete. Sales are too slow as goods manufactured for a specific order/ orders are unable to cash market due to stiff market conditions and other reasons. Promoters do not want to write-off stocks as operations are slow but steady. While manufacturing it was found that value additions was also minimal and hence great portion of Input Tax Credit is pending. Now Company M starts receiving goods laying at warehouse at higher prices and pays them too. Here there is actual supply of goods and not fake transactions like seen above. So instead of giving loans to Company N for their survival, group Company M purchases goods at higher prices and exhaust Input Tax Credit to fulfil their working capital requirements. Here Valuation Rules Determination of Value of Supply should in picture to avoid misuse of Credit.

4. **Section 271AAD of Income Tax is introduced to crack on such fake income and profit cases of fraud invoice:** With increase in invoices related frauds, Central Government in Finance Act 2020 made requisite changes to catch hold in case on Income Tax also. The section is provided as under

(1) Without prejudice to any other provisions of this Act, if during any proceeding under this Act, it is found that in the books of account maintained by any person there is—

- i. a false entry; or
- ii. an omission of any entry which is relevant for computation of total income of such person, to evade tax liability,

the Assessing Officer may direct that such person shall pay by way of penalty a sum equal to the aggregate amount of such false or omitted entry.

(2) Without prejudice to the provisions of sub-section (1), the Assessing Officer may direct that any other person, who causes the person referred to in sub-section (1) in any manner to make a false entry or omits or causes to omit any entry referred to in that sub-section, shall pay by way of penalty a sum equal to the aggregate amount of such false or omitted entry.

Explanation.—For the purposes of this section, “false entry” includes use or intention to use—

- a) Forged or falsified documents such as a false invoice or, in general, a false piece of documentary evidence;
- b) invoice in respect of supply or receipt of goods or services or both issued by the person or any other person without actual supply or receipt of such goods or services or both; or
- c) Invoice in respect of supply or receipt of goods or services or both to or from a person who does not exist.

Memorandum explaining the provisions in The Finance Bill, 2020 which is reproduced as under:-

In the recent past after the launch of Goods & Services Tax (GST), several cases of fraudulent input tax credit (ITC) claim have been caught by the GST authorities. In these cases, fake invoices are obtained by suppliers registered under GST to fraudulently claim ITC and reduce their GST liability. These invoices are found to be issued by racketeers who do not actually carry on any business or profession. They only issue invoices without actually supplying any goods or services. The GST shown to have been charged on such invoices is neither paid nor is intended to be paid. Such fraudulent arrangements deserve to be dealt with harsher provisions under the Act.

Therefore, it is proposed to introduce a new provision in the Act to provide for a levy of penalty on a person, if it is found during any proceeding under the Act that in the books of accounts maintained by him there is a (i) false entry or (ii) any entry relevant for computation of total income of such person has been omitted to evade tax liability. The penalty payable by such person shall be equal to the aggregate amount of false entries or omitted entry. It is also propose to provide that any other person, who causes in any manner a person to make or cause to make a false entry or omits or causes to omit any entry, shall also

pay by way of penalty a sum which is equal to the aggregate amounts of such false entries or omitted entry. The false entries is proposed to include use or intention to use –

- a) Forged or falsified documents such as a false invoice or, in general, a false piece of documentary evidence; or
- b) invoice in respect of supply or receipt of goods or services or both issued by the person or any other person without actual supply or receipt of such goods or services or both; or
- c) Invoice in respect of supply or receipt of goods or services or both to or from a person who do not exist.

Notes on clauses annexed to the Finance Bill which is reproduced as under:-

Clause 98 of the Bill seeks to insert a new section 271AAD in the Income-tax Act relating to penalty for false or omission of entry in books of account. It is proposed to insert a new section 271AAD, under which penalty shall be levied on a person who is required to maintain books of account, if it is found that the books contain a false entry or that any entry has been omitted which is relevant for the computation of his total income. Such person shall be liable to pay by way of penalty a sum equal to the aggregate amount of such false and omitted entries. Penalty shall also be levied on any other person who causes the person required to maintain books of account to make or causes to make any false entry or omit or cause to omit any entry in books of account. The false entries shall include use or intention to use forged or falsified documents such as a false invoice or, in general, a false piece of documentary evidence; or invoice in respect of supply or receipt of goods or services or both issued by the person or any other person without actual supply or receipt of such goods; or invoice in respect of supply or receipt of goods or services or both to or from a person who does not exist.

In addition to amendments to Income Tax Act corresponding and supportive changes in CGST Act were also made by Government.

In section 122 of the Central Goods and Services Tax Act, after sub-section (1), the following sub-section shall be inserted, namely:—

“(1A) Any person who retains the benefit of a transaction covered under clauses (i), (ii), (vii) or clause (ix) of sub-section (1) and at whose instance such transaction is conducted, shall be liable to a penalty of an amount equivalent to the tax evaded or input tax credit availed of or passed on.”.

The explanation given for the same is as follows:

Clause 124 of the Bill seeks to insert a new sub-section (1A) in section 122 of the Central Goods and Services Tax Act so as to make the beneficiary of certain transactions at whose instance such transactions are conducted liable for penalty.

In section 132 of the Central Goods and Services Tax Act, in sub-section (1),— (i) for the words “Whoever commits any of the following offences”, the words “Whoever commits, or causes to commit and retain the benefits arising out of, any of the following offences” shall be substituted;

(ii) for clause (c), the following clause shall be substituted, namely:—

“(c) avails input tax credit using the invoice or bill referred to in clause (b) or fraudulently avails input tax credit without any invoice or bill;”; (iii) in sub-clause (e), the words “, fraudulently avails input tax credit” shall be omitted.

The explanation given for the same is as follows:

Clause 125 of the Bill seeks to amend section 132 of the Central Goods and Services Tax Act so as to make the offence of fraudulent availment of input tax credit without invoice or bill cognizable and non-bailable under sub-section (1) of section 69 and to make any person who retains the benefit of certain transactions and at whose instance such transactions are conducted liable for punishment.

From the above it is very clear that government is very keen to bring the preparatory of False Invoices and Invalid Credits to justice and ensure that no revenue is lost because of such fraudulent activities of Businesses.