

RESPITE FROM LITIGATION FOR INPUT TAX CREDIT FOR FY 2017-18 & 2018-19

One of the salient features of GST is the availability of seamless input tax credits across the supply chain. This process will ensure that the end price the consumer pays is less as there is no tax cascading, and this will increase the purchasing power. Once the purchasing power increases, it will have a ripple impact on the economy and will help the country to achieve a \$ 5 trillion economy. But availing of the input tax credit is becoming challenging to registered taxpayers due to multiple challenges. Some of the challenges faced by registered taxpayers are

1. Resistance to change by the taxpayers, the business process has to be changed in GST as it is business reform and not a tax reform
2. As envisaged in the draft reports for GST, the two-way communication between the supplier and the receipt could not be implemented
3. Reluctance from the registered taxpayers for adopting the two-way communication in the initial days but later realized that is the best option
4. Changes in the provisions for availing the input tax credit
5. Interpretation of the provisions related to input tax credit

During the last five years plus of the rollout of GST, we have seen many changes in availing the input tax credit in GST. There was a period when taxpayers were able to take the input tax credits in GSTR-3B directly and then Form GSTR – 2A was introduced, and then we have availing input tax credit on a certain percentage basis, and now, after the rollout of Form GSTR – 2B, the input tax credit has to be availed basis of the same.



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Form GSTR – 9 is the annual return, where the taxpayer can make any changes or rectify the errors which were part of the returns filed during the year. The input tax credit shown/reported in the GSTR- 9 is final for the taxpayer, and if there are any issues detected/identified by the Department Officers during the audit or scrutiny of returns of the registered taxpayers, the officers have issued notices under Section 73 or Section 74 of the CGST Act 2017. The taxpayers were asked to reverse the input tax credit availed being flagged by the officers or pay the same with interest through DRC-03 if there is the credit balance is not available in the Electronic Credit Ledger.

For many Taxpayers, the input tax credit has been claimed, but the challenges were faced in the following areas

- a) The Supplier of Goods or Services or both have not filed GST Returns
- b) The Supplier of Goods or Services or both have filed GST Returns but did not report the tax invoice of the recipient
- c) The Supplier of Goods or Services or both have filed GST Returns but reported them in the next financial year
- d) The Supplier of Goods or Services or both has filed only GSTR – 1 but has not paid the taxes
- e) The Supplier of Goods or Services or both has paid taxes but not filed GSTR – 1
- f) The Supplier of Goods or Services or both has reported the B2B supplies as B2C supplies
- g) The Supplier of Goods or Services or both has entered the GSTIN of the Recipient of the Good or Services or both wrongly
- h) The Supplier of Goods or Services or both has entered the Taxable value of the supply wrongly while filing GSTR -1 and have not made any amendments to rectify the same
- i) The Recipient Goods or Services or both have entered the Taxable value of the supply wrongly while accounting in the books of accounts
- j) The Recipient Goods or Services or both have

entered the GSTIN of the Supplier wrongly while accounting

- k) The Recipient Goods or Services or both have entered the same in his books of account in a different GSTIN of his
- l) The Recipient Goods or Services or both have not accounted in his books of accounts
- m) Matching was not done by the Recipient Goods or Services or both

Over a period of time, these challenges have been addressed by most of the taxpayers, and now it is more or less a settled issue, as the taxpayers have changed their business process by adopting of one or more of the following

- Doing 100% matching or reconciliation every month before the filing of GSTR-3B & GSTR – 9
- Verifying with the supplier for the filing of the returns
- Paying the tax amount to the supplier only on reflection in the GSTR – 2B

The major point of litigation between the taxpayers and the department is for the notices issued for the mismatch of the input tax credit claimed in the GSTR-9 and the amount reflected in GSTR – 2A. Many representations have been made by various trade and professional bodies, including our institute, for relaxing the measures. The Maharashtra Commercial Tax Department has issued an Internal Circular in this context. The matter was taken up during the 48th GST Council Meeting, and now Circular No. 183/15/2022-GST dated 27th December 2022 has been issued where certain relaxation has been provided and on how to address. the challenges.

The circular issued the following challenges

1. Supplier has made the payment of the tax-wide GSTR – 3B but has not filed GSTR-1
2. Supplier has made the payment of the tax through GSTR – 3B but did not report it in his GSTR – 1
3. The Supplier has made payment of the tax and filed GSTR – 1 but has classified the transaction as B2C in instead of B2B

4. The Supplier has made payment of the tax and filed GSTR – 1 but has entered the GSTIN of the Recipient Wrongly while filing GSTR – 1.

The relaxation measure provided in the Circular for the above cases

1. The officer will verify all the Invoices for which input tax credit has been availed, but these invoices are not reflected in GSTR – 1 of the Supplier and in GSTR – 2A of the Recipient and ensure the provisions of Section 16 are met, namely
 - a) The Recipient is in possession of the tax invoice or debit note issued by the Supplier
 - b) The Recipient has received the Goods or Services or Both
 - c) The Recipient has paid the Supplier the tax amount along with the taxable value
 - d) Input Tax Credit has been reversed if required used partly for exempted supplies or as in special cases as mentioned in Section 18 of the CGST Act 2017
 - e) The Supplier of Goods has discharged the tax liability either using the Input Tax Credit or in Cash
 - f) The Recipient has availed in the Input Tax Credit within the stipulated time period

If the officer is satisfied with the above points, the difference can be allowed and initiate the proceeding accordingly.

the Officer has to follow the procedure mentioned here if there is a difference between the Input Tax Credit claimed

in GSTR- 9 and GSTR-2A

- a) Obtain a certificate from a Cost Accountant or Chartered Accountant with UDIN and to be verified on their respective portals
- b) If the difference for the Input Tax Credit availed an amount reflected in GSTR-2A is upto ₹ 5 lacs, the Recipient should obtain a certificate from a Cost Accountant or Chartered Accountant with UDIN and to be verified on their respective portals

Before issuing the Certificate with UDIN, the Cost Accountant or Chartered Accountant have to ensure the following

- 1) Obtain an engagement letter for the issue of a Certificate separately
- 2) Verify all the invoices being mentioned in the Certificate
- 3) Verify if all the provisions for Sections 16, 17 and 18, wherever applicable, are met
- 4) Maintain a copy of all relevant records for future reference – hard or soft copies

Since it is a revenue-related matter, the Cost Accountant or Chartered Accountant has to ensure due diligence before issuing of certificate else there is a possibility in the future that the certification requirements may be withdrawn, similar to GSTR-9C. As no format is prescribed, the Cost Accountant or Chartered Accountant should issue the certificate accordingly.

These relaxation measures can be utilized by the taxpayers whose proceedings are ongoing only and not for the taxpayers where it is closed.