

POST-BUDGET MEMORANDUM 2022

Indirect Taxes



**THE INSTITUTE OF CHARTERED ACCOUNTANTS
OF INDIA
NEW DELHI**

INTRODUCTION

The Institute of Chartered Accountants of India (ICAI) considers it a privilege to submit the Post-Budget Memorandum, 2022 on Indirect Taxes to the Government of India.

We believe that addressing the said issues would make tax laws simple, fair and transparent and avoid litigation.

In case any further clarifications or data is considered necessary, we shall be pleased to furnish the same.

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SUGGESTIONS ON AMENDMENTS PROPOSED IN CGST ACT, 2017 VIDE THE FINANCE BILL, 2022

- 1. Communication of details of inward supplies and input tax credit and conditions for taking input tax credit [Proposed clause (ba) of section 16(2) of the CGST Act, 2017 read with proposed section 38(2)(b)]**

Amendment

The amendment proposed in section 16(2)(ba) of the CGST Act, 2017 seeks to provide that input tax credit with respect to a supply can be availed only if such credit has not been restricted in the details communicated to the taxpayer under section 38.

Section 38 of the CGST Act, 2017 is proposed to be substituted for prescribing the manner as well as conditions and restrictions for communication of details of inward supplies and input tax credit to the recipient by means of an auto-generated statement and to do away with two-way communication process in return filing.

Issue

Input tax credit under GST law is subject to various restrictions and conditions. Proposed section 38 adds more restrictions on claiming input tax credit and the significant point to note here is that such restrictions/conditions are not on account of any action/omission on part of the recipient but on account of the conduct of the supplier.

Restricting credit on supplies made by a registered person within such period of taking registration as may be prescribed or by a registered person who has defaulted in payment of tax (not just confined to supplies received by the recipient) and where such default has continued for such period as may be prescribed or on account of output tax mis-matches of the supplier are few of the defaults/lapses on part of the supplier which are prescribed under section 38(2)

that will restrict the credit in the hands of the recipient. While these proposals may be reasonable to curb fake invoicing cases, enforcement of such provisions in other genuine cases will jeopardise the credit flow and will create unwarranted complexities in credit mechanism.

The Government is fully justified in its measures to prevent any leakages of tax and in this regard ensure that the taxes in respect of which the ITC has been availed have actually been paid into Government treasury. However, the powers of recovery must be used for the errant supplier and the *bona fide* rights of the recipient must not be forfeited.

Purpose of section 38 has already been achieved through Form GSTR-2B and blocking of credits under rule 86B. Credit appearing in Form GSTR-2B can be further reduced by the criteria listed in section 38. Various States are yet to restore blocked credit even after mandatory 1 year has passed. Delegation without guidance on the 'basis' for rules to be prescribed, makes it excessive and is likely to be challenged in one State or another.

Furthermore, restriction in section 38 are 'to be prescribed' and since section 16(2)(ba) is contingent on 'restrictions' prescribed under section 38, it amounts to Rules guiding the Act, which is against the legal principles. There is excessive delegation of power in proposed section 38 making the entire provision open to challenge on the ground of arbitrariness.

Section 16(2) contains various 'vesting conditions' and to make these conditions 'subject to' additional restrictions, which are 'to be prescribed' will come in for challenge and take a few years to be resolved. Pending this resolution, taxpayers may continue to claim credit to protect themselves from time-barring under section 16(4).

Suggestion

The proposed clause (ba) in section 16(2) of the CGST Act, 2017 and entire substituted section 38 of the CGST Act, 2017 be deleted.

Alternatively, the reconciliation of ITC claimed in GSTR-3B on the basis of Form GSTR-2B be done quarterly. Only at the end of a quarter, the restrictions for availing credit be applied and the excess credit be reversed without any interest. All other conditions for availing credit be applied on monthly basis/ quarterly basis for quarterly filers under QRMP scheme. Moreover, the proposed clause (iv) in section 38(2) i.e., disallowance of ITC to recipient where the supplier has availed ITC in excess of what he is eligible to, be omitted as the recipient is not even remotely concerned with the transaction and such a provision will have implications in the supply chain.

Further, a provision of reconciliation statement be introduced in the Form GSTR-3B of the months of June, September, December and March for reconciling the difference in ITC reflected as per Form GSTR-2B and claimed as per Form GSTR-3B. A mechanism be enabled for providing reasons for the differences between Form GSTR-3B and Form GSTR-2B for a specific quarter in a Tabular form similar to Tables 8 and 12, 13 of Form GSTR-9.

2. Doing away with the concept of claim of eligible input tax credit on a “provisional basis” [Substituted section 41 of the CGST Act, 2017]

Amendment

Section 41 of the CGST Act, 2017 is proposed to be substituted so as to do away with the concept of “claim” of eligible input tax credit on a “provisional” basis and to provide for availment of self-assessed input tax credit subject to such conditions and restrictions as may be prescribed.

Issue

Input tax credit can only be availed when tax is paid by supplier. When tax is paid by supplier in his Form GSTR-3B, it does not contain details of individual invoices on which tax has been paid. Thus, it is practically not possible for the recipient to check whether supplier has paid tax on every invoice issued to him or not. Further, even if 100% of tax payable as per Form GSTR-1 is paid through

Form GSTR-3B, recipient would not be in a position to know whether supplier has paid all taxes since due date of filing of Form GSTR-3B is same for both the supplier and the recipient. Thus, in the absence of a proper mechanism facilitating the recipient to know as to whether the tax has been paid by the supplier or not, it will be unreasonable to restrict the credit of the recipient for the reason of non-payment of tax by the supplier.

Furthermore, as is understood from the proposed scheme of section 41 of the CGST Act, 2017, the recipient will first be allowed to take input tax credit and thereafter, he will be intimated through GST portal if the supplier defaults in payment of tax. Upon receiving such intimation, the recipient will be required to reverse the ITC along with applicable interest. Here too, charging interest for a lapse beyond the control of the recipient is unfair.

Also, it is to be noted that not only will the recipient pay interest on input tax credit, but the supplier will also pay interest for non-payment of tax. Thus, for one default interest will be recovered twice. The interest liability will become especially harsh when the defaulting supplier will pay tax and the recipient will be able to re-avail the credit as the interest paid will not be refunded to him at the time of re-availment of credit.

Another point to consider is that the interest is required to be paid on mere wrong availing of input tax credit under proposed section 41 which is not in consonance with amendment proposed in section 50(3) of the CGST Act, 2017 which requires payment of interest in case of ITC utilized wrongly and not merely availed wrongly.

Suggestion

Till the time a robust IT system capable of providing real time information to the recipient of payment of tax by the supplier is put in place, the existing dispensation of claiming input tax credit on provisional basis be continued.

Alternatively, the ITC be allowed to be availed on provisional basis for a quarter and at the end of the quarter, ITC claimed in Form GSTR-3B be reconciled with ITC as reflecting in Form GSTR-2B.

3. Time limit for rectification of errors or omission in Form GSTR-1 [Proviso to section 37(3) of the CGST Act, 2017]

Amendment

The proviso to section 37(3) of the CGST Act, 2017 is proposed to be amended to provide an extended time upto 30th day of November of the following financial year for rectification of errors in respect of details of outward supplies furnished in Form GSTR-1.

Issue

Under the existing provisions, the rectification of details furnished in a Form GSTR-1 is carried out in any other Form GSTR-1 whenever the mistake or omission is noticed. However, no such rectification can be done 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.

The monthly Form GSTR-1 is filed on 11th/13th day of the succeeding month/quarter. Thus, rectification can be done on 11th/13th day of a month. Therefore, it is not clear as to how the rectification will be done on 30th November as proposed in the amendment. If the current dispensation continues, essentially the time period for rectification of errors in Form GSTR-1 gets extended only by one month i.e., from 11th/13th October to 11th/13th November. The 19/17 days from 12th/14th November to 30th November will not be of any use for the taxpayer as Form GSTR-1 for the month of November will be filed on 11th/13th December which will be beyond the specified date.

Suggestion

The time period for rectification of errors/omissions in respect of the details furnished in Form GSTR-1 be extended till the due date of furnishing of the return under section 39 for the month of November following the end of financial year to which details pertain, or furnishing of the relevant annual return, whichever is earlier. This would extend the time period for rectification of errors/omission in respect of the details furnished in Form GSTR-1 by two clear months.