



The Institute of Chartered Accountants of India GST & Indirect Taxes Committee

GOODS & SERVICES TAX UPDATE-186

Clarification with regard to charging of interest under section 50(3) of the CGST Act, 2017 in cases of wrong availment of IGST credit and reversal thereof

As per section 50(3) of CGST Act, 2017, if the registered person has wrongly availed and utilised the Input Tax Credit (ITC), then he shall be liable to pay interest at the rate not exceeding 24% on the amount of ITC wrongly availed and utilised.

As per explanation provided in sub-rule (3) of rule 88B of CGST Rules, ITC shall be construed to have been utilised, when the balance in the electronic credit ledger falls below the amount of ITC wrongly availed. Further, the extent of such utilisation of ITC shall be such amount by which the balance in electronic credit ledger falls below the amount of ITC wrongly availed.

Issue:

For the purpose calculating of interest under rule 88B, whether the balance of ITC available in electronic credit ledger under the head of IGST only needs to be considered or total ITC available in electronic credit ledger, under the heads of IGST, CGST, SGST and compensation cess taken together, has to be considered?

Clarification with respect to utilization of CGST, SGST and IGST taken together

The total input tax credit available in electronic credit ledger, under the heads of IGST, CGST and SGST taken together shall be considered -

- for calculation of interest under rule 88B, and
- for determining as to whether the balance in the electronic credit ledger has fallen below the amount of wrongly availed input tax credit of IGST, and
- for determining to what extent, balance in electronic credit ledger has fallen below the said amount of wrongly availed credit.

Clarification with respect to utilization of Compensation Cess

The ITC in respect of compensation cess on supply of goods and service cannot be utilized for

payment of any tax under CGST, SGST and IGST heads and/or reversals of credit under the said heads. Accordingly, credit of compensation cess available in electronic credit ledger shall not be taken into account while considering the balance of electronic credit ledger for the purpose of calculation of interest under sub-rule (3) of rule 88B of CGST Rules in respect of wrongly availed and utilized IGST, CGST or SGST credit.

[Circular No. 192/04/2023-GST dt. 17.07.2023](#)

Clarification to deal with difference in Input Tax Credit (ITC) availed in FORM GSTR-3B as compared to that detailed in FORM GSTR-2A for the period 01.04.2019 to 31.12.2021

1. For the period 01.04.2019 to 08.10.2019

Since rule 36(4) came into effect from 09.10.2019 only, hence, the guidelines provided by [Circular No. 183/15/2022-GST dated 27th December, 2022](#) shall be applicable, as a whole, for the period from 01.04.2019 to 08.10.2019.

2. For the period 09.10.2019 to 31.12.2019

In this period, rule 36(4) allowed availment of additional Input tax credit by a registered person in respect of invoices or debit notes, the details of which have not been furnished by the suppliers in GSTR-1 to the extent of 20% of the eligible credit available in respect of invoices or debit notes the details of which have been furnished by the suppliers in FORM GSTR-1 or using IFF. Accordingly, the guidelines provided by [Circular No. 183/15/2022-GST dated 27.12.2022](#) shall be applicable for verification of the condition of section 16(2)(c) related to payment of tax charged to the Government subject to the fulfillment of condition as specified in rule 36(4) as applicable during that period.

3. For the period from 01.01.2020 to 31.12.2020

In this period, rule 36(4) allowed availment of additional Input tax credit by a registered person in respect of invoices or debit notes, the details of which have not been furnished by the suppliers in GSTR-1 to the extent of 10% of the eligible credit available in respect of invoices or debit notes the details of which have been furnished by the suppliers in FORM GSTR-1 or using IFF. Accordingly, the guidelines provided by [Circular No. 183/15/2022-GST dated 27.12.2022](#) shall be applicable for verification of the condition of section 16(2)(c) related to payment of tax charged to the Government subject to the fulfillment of condition as specified in rule 36(4) as applicable during that period.

4. For the period from 01.01.2021 to 31.12.2021

In this period, rule 36(4) allowed availment of additional Input tax credit by a registered person in respect of invoices or debit notes, the details of which have not been furnished by the suppliers in GSTR-1 to the extent of 5% of the eligible credit available in respect of

invoices or debit notes the details of which have been furnished by the suppliers in FORM GSTR-1 or using IFF. Accordingly, the guidelines provided by *Circular No. 183/15/2022-GST dated 27.12.2022* shall be applicable for verification of the condition of section 16(2)(c) related to payment of tax charged to the Government subject to the fulfillment of condition as specified in rule 36(4) as applicable during that period.

It has been further clarified that consequent to insertion of clause (aa) to sub-section (2) of section 16 of the CGST Act and amendment of rule 36(4) of CGST Rules w.e.f. 01.01.2022, no ITC shall be allowed for the period 01.01.2022 onwards in respect of a supply unless the same is reported by his suppliers in their FORM GSTR-1 or using IFF and is communicated to the said registered person in FORM GSTR-2B.

Further, it may be noted that proviso to rule 36(4) was inserted vide *Notification No. 30/2020-CT dated 03.04.2020* to provide that the condition of rule 36(4) shall be applicable cumulatively for the period February to August, 2020 and ITC shall be adjusted on cumulative basis for the said months in the return for the tax period of September 2020. Similarly, second proviso to rule 36(4) of CGST Rules was substituted vide *Notification No. 27/2021-CT dated 01.06.2021* to provide that the condition of rule 36(4) shall be applicable cumulatively for the period April to June, 2021 and ITC shall be adjusted on cumulative basis for the said months in the return for the tax period of June 2021. The same may be taken into consideration while determining the amount of ITC eligibility for the said tax periods.

Furthermore, these instructions will apply only to the ongoing proceedings in scrutiny/ audit/ investigation, etc. for the period 01.04.2019 to 31.12.2021 and not to the completed proceedings. However, these instructions will apply in those cases during the period 01.04.2019 to 31.12.2021 where any adjudication or appeal proceedings are still pending.

[Circular No. 193/05/2023-GST dt. 17.07.2023](#)

***Vice - Chairman
GST & Indirect Taxes Committee***

***Chairman
GST & Indirect Taxes Committee***

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The Institute of Chartered Accountants of India, ICAI Bhawan, A-29, Sector 62, Noida (U.P.)-201301