

Input Tax Credit -Amendments proposed in Finance Bill, 2022

During the excise era, a new concept of proforma credit scheme was introduced in order to reduce the double taxation effect with restriction that the credit can be claimed only within the same tariff of goods that were manufactured. This system had lot of deficiencies and hence, the Government came up with a revised version in the name of 'Modified Value Added Tax' (MODVAT) in the year 1986-87 with the same objective and permitting credit of excise duty only on inputs for manufacturers. Later on, the scheme was extended to capital goods also. Read on...

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History of Input Tax Credit

In the year 2001, CENVAT Credit Rules, 2001 were introduced which were superseded by the CENVAT Credit Rules, 2002. Credit of service tax paid on input services was introduced for the first time in the year 2002. In the year 2004, CENVAT Credit Rules, 2004 were notified to integrate the credit of excise duty payable on goods (both inputs and capital goods) and service tax payable on services.

In the meantime, from the system of sales tax, one-point tax, resale tax etc., the States moved to implement Value Added Tax Laws from 2005 onwards wherein the law permitted the taxpayer to claim input tax credit (VAT) and use the same for payment of output tax liability.

While VAT continued without much disturbance, the CENVAT

Credit Rules, 2004 were hit with amendments every year after year. One can find that, the scope of availment of CENVAT Credit started shrinking continuously. This concept, having spent considerable time under the Excise, Service tax and VAT laws, moved to the biggest reform in the tax landscape of the country – implementation of Goods & Services Tax in India.

Graduation of Cenvat – Input Tax Credit Under GST

The input tax credit (ITC) was introduced as part of the GST Act under section 16 which was earlier governed by 'Rules' as far as CENVAT was concerned. The slogan to make GST reach out to every common man was "One Nation One Tax". This was supported by the phrase – "Seamless flow of Input Tax Credit".



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One will be aware that, from the time the GST law was introduced, the concept of “blocked credit” also came along and had its seat under section 17(5) of the CGST Act. The law provides that no credit can be availed on construction, rent a cab, business promotion expenses etc., though many such transactions are for business purpose. This adversely affected the flow of ITC. Later, the rates of various goods and services were tweaked and many such amendments carried conditions with them that no ITC shall be availed by the supplier. This further hindered the flow of ITC.

Multiple Rate Tweaks With “No ITC” Conditions

One can find that on ‘recommendations from the council’, the CBIC has tweaked the rates multiple times for various services with conditions that “no input tax credit shall be availed”.



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SAC Code	Activity	Rate of Tax	Conditions
9954	Construction of Residential Complex	1% or 5%	No ITC
9963	Supply of Food or any article for human consumption including by Railways, IRCTC, Outdoor catering (i) to (v)	5%	No ITC
9964	Passenger Transportation Service (except for other than economy class)	5%	No ITC
9965	Transport of goods by rail/vessel/GTA (except forward charge) and multimodal transport	5%	No ITC on goods for rail and vessel
9966	Rental services of transport vehicles with operators (Option to opt for full rate with ITC available separately)	5%	No ITC
9971	Financial related services by foreman of a Chit Fund in relation to chit	12%	No ITC on goods
9985	Tour operator service	5%	No ITC
	Support services by way of house-keeping and plumbing even if supplied through e-commerce	5%	No ITC

Due to reduction of rates for the benefit of common man, the cascading effect could not be removed as the supplier is barred from taking input tax credit. The cost has only increased, and it is passed on to the end consumer. The *Roti and Makaan* (Restaurant & Construction services) are already under the concessional rate with no ITC, the effect of which has fallen on a common man.

Going forward, a provision *vide* rule 86B was introduced to restrict the payment of full tax with input tax credit. Based on certain conditions, at least 1% of tax was mandated to be paid in cash, which has been

removed recently. Further, rule 36(4) was introduced to provide for restriction in availment of input tax credit which does not appear in the Form GSTR-2B. The taxpayer was initially permitted to avail the input tax credit on those transactions that were reflecting in Form GSTR-2B [earlier Form GSTR-2A] and claim 20% of such eligible credit for those transactions which are not appearing in GSTR-2B but supported by a valid invoice. Later, the rate of 20% was reduced to 10%, then to 5% and now, it is made “0%”. This step, though mirrors the ‘Zero Tolerance’ approach by Government on the reason of fake invoicing and bill

trading has also hit the genuine taxpayers very badly.

Budget Proposals, 2022 on ITC

The present Budget, 2022 came up with few salient provisions with regard to the input tax credit. The proposals are discussed along with the implications below.

Section 16 of the CGST Act, is all about eligibility and conditions for taking input tax credit. A new clause is proposed to be inserted *vide* clause (ba) after section 16(2)(b) which is as follows:

“(ba) the details of input tax credit in respect of the said supply communicated to such registered person under section 38 has not been restricted”

Earlier clause (aa) was introduced and made effective from 1st Jan 2022 which prescribed conditions that, the details of the invoice or debit note has been furnished by the supplier in the statement of outward supplies i.e., GSTR-1 and such details have been



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communicated to the recipient of such invoice or debit note in the manner specified under section 37.

The current proposal aims to put additional condition that such credit which is communicated to the registered person as per the new section 38 should be a restricted one. In other words, only that credit, which is not restricted, will be available to be claimed. The restrictions imposed by way of section 38 are discussed below.

The newly proposed section 38 prescribes 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 which shall consist of:

- details of inward supplies in respect of which credit of input tax **may be available** to the recipient; and
- details of supplies in respect of which **such credit cannot be availed, whether wholly or partly, by the recipient, on account of the details of the said supplies being furnished under sub-section (1) of section 37, –**

Checks introduced on supplier's action on account of the details of the said supplies being furnished in Form GSTR-1 under sub-section (1) of section 37:	Impact on ITC to be claimed by recipient
<i>by any registered person within such period of taking registration as may be prescribed;</i>	ITC availed from new registrants may be restricted as per the period that will be specified. (Restriction)
<i>by any registered person, who has defaulted in payment of tax and where such default has continued for such period as may be prescribed;</i>	Credit cannot be availed from a supplier who has defaulted in payment of tax for certain period as may be prescribed. (Denial)
<i>by any registered person, the output tax payable by whom in accordance with the statement of outward supplies furnished by him under the said sub-section during such period, as may be prescribed, exceeds the output tax paid by him during the said period by such limit as may be prescribed</i>	Credit may be restricted where the output liability is more than the output tax paid by the supplier during the said period exceeding certain limit as may be prescribed. (Restriction can be to the extent of proportionate unpaid portion)
<i>by any registered person who, during such period as may be prescribed, has availed credit of input tax of an amount that exceeds the credit that can be availed by him in accordance with clause (a), by such limit as may be prescribed;</i>	The recipient will be denied or restricted the credit if the recipient's supplier, during the said period has availed ITC in excess of what can be availed by him. (Denial or Restriction)

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<p><i>by any registered person, who has defaulted in discharging his tax liability in accordance with the provisions of sub-section (12) of section 49 subject to such conditions and restrictions as may be prescribed;</i></p>	<p>Again, a new insertion of sub-section 12 under section 49, which begins with a non-obstante clause to provide that, Government may specify such maximum proportion of output tax liability under this Act or under the Integrated Goods and Services Tax Act, 2017 which may be discharged through the electronic credit ledger by a registered person or a class of registered persons, as may be prescribed. Hence, even if there are no restrictions, 49(12) will be invoked for restricting the usage of ITC. (Restriction)</p>
<p>by such other class of persons as may be prescribed.”</p>	<p>Government can prescribe the class of persons from whom the ITC availed can be restricted or not allowed.</p>

There are few other amendments which have been proposed in order to ensure that all the ways and means to plan an escape by the errant taxpayer are blocked completely:

- a) Section 16(2)(c) of the CGST Act is proposed to be amended to refer section 41 and to provide that the tax charged in respect of such supply has been actually paid to the Government either in cash or credit which is admissible in

respect of the concerned supply. In this situation, a taxpayer does not have any means other than getting a confirmation from the vendor as to whether the tax charged by the vendor has been actually paid to the Government. The taxpayer cannot be in a position to comply with this particular provision in order to become eligible to claim input tax credit.

- b) Section 41 of the CGST Act, is proposed to be completely substituted with a new section with the new name – “Availment of input tax credit” specifying that, the registered person subject to conditions and restrictions will be entitled to claim input tax credit as per “self-assessed” mode in his returns. (Provisional basis has been done away with. Hence, two-way communication

is also out). Further, if the supplier has not paid the appropriate taxes, such ITC availed by the recipient shall be reversed along with applicable interest in such manner as may be prescribed. It is pertinent to note here that, section 50 is proposed to be amended with retrospective effect to say that interest will be applicable only if the ineligible credit is availed and utilised.

A proviso also has been inserted to state that where the concerned supplier is making the tax payment, the registered person i.e., recipient may re-avail the amount of credit reversed earlier.

- c) Consequent to the availment of credit being made under “Self-assessment” mode, the question of provisional availment, two-way communication and various steps to be followed by the tax officer and taxpayer in order to match and claim the tax from the actual supplier has been removed. In other words, the only section which the taxpayer could fall upon to defend the mismatch between GSTR-2A & GSTR-3B issues i.e., section 42 has been removed along with section 43A which was introduced with expectation of launch of new set of instructions for furnishing return and availment of input tax credit.



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Issues With Regard to Procedural Aspects

Many taxpayers and professionals would have experienced quite a few problems with regard to ITC in doing GST compliance:

- The first instance is – Invoice from the supplier is dated 29th of a month and goods are received on 3rd of next month. However, GSTR-2B of the current month contains the details of ITC which a taxpayer is not supposed to take unless he is in receipt of goods or services. Later, when he avails the credit in the next month, the system highlights that excess credit has been claimed. Even, the popup box opens a message that the registration is liable for suspension if credit is claimed in excess.
- The second instance being – non reflection of IGST credit paid during imports. Though a window has been provided to pull the information, it is really a difficult task for taxpayers who have multiple import transactions in a tax period as there is no window for bulk processing facility.
- The third instance being – if a taxpayer inadvertently has availed the input tax credit as CGST & SGST instead of IGST, and it is discovered only during the GST Annual return filing exercise, the taxpayer is made to reverse the credit of CGST & SGST as it amounts to excess

availment. Further, he is not permitted to take IGST credit as the time limit has already lapsed. The Government must permit availment of input tax credit under correct head in genuine cases.

Time Limit for Availing Input Tax Credit

Section 16(4) of the CGST Act, provided that, a registered person shall not be entitled to take input tax credit in respect of any invoice or debit note for supply of goods or services or both after the due date of furnishing of the return under section 39 for the month of September following the end of financial year to which such invoice or debit note pertains or furnishing of the relevant annual return, whichever is earlier. The above underlined words have been modified to “thirtieth day of November”. In other words, the credit from invoice belonging to a particular year can now be claimed till 30th November of next year.

If one can relate the input tax credit provisions with the erstwhile regime of CENVAT or VAT, it may be recollected that, there was no restriction with regard to time for availing the input tax credit. For instance, if an excise or service tax return was being filed for a tax period after a period of say 2 years, the taxpayer was permitted to claim input tax credit as was available with him during the said period and adjust the same with the tax liability of the said period and pay the balance amount in cash along with interest on the same. Only in late 2014, a limitation on availment of credit was imposed

based on the invoice date. i.e., a taxpayer was not permitted to claim credit on any invoice which is beyond one year.

Though the proposal to extend the time limit for availing ITC under GST is a welcome move, still there is a requirement of much more clarity. Let us take an instance under GST - in the Covid pandemic situation, the taxpayer had availed the input tax credit in his books for say the month of March 2020 and he was unable to file the returns resulting in cancellation of his registration. The taxpayer could file the return only during November 2020. Since the due date provided for availing the ITC as per section 16(4) had lapsed, it was concluded by the Department that credit availed is ineligible and it will be accepted as valid return only if the entire amount is paid in cash. It is important here to note that the credit has already been availed by him in his books and it is only a declaration that is being made in the form of a return. The Government can consider the imposing of restriction by way of fixing limitation on time from date of invoice and permitting the claiming of credit in the particular month's return to which it belongs whenever such return is filed.

Concluding Remarks

Input tax credit, being the core fulcrum of GST Law, the provisions thereof should aim at seamless flow of credit and improving ease of doing business. There is a need to work more convincingly on strengthening the input tax credit mechanism in GST law. With the involvement of the trade and industry bodies and more importantly the common man, Government can take appropriate steps to ensure that the objective of seamless flow of credit is achieved. ■■■