# ITC on Reverse Charge

Query- Can Input tax Credit on Reverse Charge Mechanism be availed in the same month?

Provisions related to ITC:-

Section-16(2): Conditions for availing ITC have been put forth in Section 16(2) of CGST Act. The conditions are reproduced below:

(2) Notwithstanding anything contained in this section, no registered person shall be entitled to the credit of any input tax in respect of any supply of goods or services or both to him unless,—

(a) he is in possession of a tax invoice or debit note issued by a supplier registered under this Act, or such other tax paying documents as may be prescribed;

(b) he has received the goods or services or both.

Explanation - For the purposes of this clause, it shall be deemed that the registered person has received the goods, where the goods are delivered by the supplier to a recipient or any other person on the direction of such registered person, whether acting as an agent or otherwise, before or during movement of goods, either by way of transfer of documents of title to goods or otherwise;

*(c) subject to the provisions of section 41, the tax charged in respect of such supply has been actually paid to the Government, either in cash or through utilisation of input tax credit admissible in respect of the said supply;*

(d) and he has furnished the return under section 39"

Section 36(b): *As per rule 36(b) of CGST Rules, recipient who is liable to pay tax under reverse charge can take itc of the same subject to the payment of tax.*

Section-41(1): Section 41(1) of CGST Act allows credit of ITC without payment of tax by supplier. However this provision will not apply to tax payable under reverse charge, as there is specific provision that credit is only after payment of tax.

Conclusion: With reference to the above provisions credit would be allowed only if the tax amount has been paid to the government.

Payment will be complete only after setting off the liability in valid return. “Valid Return” means a return furnished under section 39(1) of CGST Act on which self -assessed tax has been paid in full. Thus the amount paid in the cash ledger before filing of monthly return, cannot be taken as ‘payment of tax due under reverse charge’ since at that stage there is no ‘valid return’.

At the end we can conclude that we can claim the ITC of RCM in the following month only. Since amount can’t be said to be paid before that period.

Example: Let us assume that for the m/o January, 2018, tax of Rs. 2,50,000/- was payable under RCM. Now suppose the taxable person pays Rs. 2,50,000/- in Electronic Cash Ledger on (say) 31st Jan, 2018 or 25th Feb, 2018, can he utilise the credit of Rs. 2,50,000/- for paying tax on 20th Feb, 2018 for the m/o Jan, 2018.

The credit will not be permissible for following reasons-

(a) There is no separate head in Electronic Cash ledger to pay tax under Reverse Charge. Thus, whatever amount paid in Electronic Cash Ledger is a general deposit and not for payment of any particular amount.
(b) In GST "Payment" made means payment under 'valid return'. "Valid Return" means a return furnished under section 39(1) of CGST Act on which self-assessed tax has been paid in full- Section 2(117) of CGST Act.
(c) Thus amount of Rs. 2,50,000 paid before filing of monthly return on 20-02-2018 cannot be taken as 'payment of tax due under reverse charge' since at that stage there is no 'valid return'
(d) Section 41(1) of CGST Act allows credit of Input tax credit without payment of tax by the supplier. However, this provision will not apply to tax payable due under reverse charge basis as there is no specific provision that credit is only after payment of tax.

Hence, credit cannot be utilized while filing return on 20-02-0218. Once return is filed with full taxes, it will be a valid return and then its credit will be available while making payment of taxes on 20-03-2018.

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