GST Law - Changes and Clarifications on ITC Claim in Return GSTR-3B [Insertion of Rule 36(4) w.e.f. 9-10-2019 and Circular issued on 11-11-2019]

The Government has amended The Central Goods and Services Tax Rules, 2017 (hereinafter referred as "CGST Rules" vide the Central Goods and Services Tax (Sixth Amendment) Rules, 2019 through Notification No.49/2019 – Central Tax dated 9th October, 2019 and made effective from the date of their publication in the Official Gazette i.e. 9th October 2019.

Sub-rule (4) to Rule 36 was inserted which reads as follows -

"Input tax credit to be availed by a registered person in respect of invoices or debit notes, the details of which have not been uploaded by the suppliers under sub-section (1) of section 37, shall not exceed 20 per cent. of the eligible credit available in respect of invoices or debit notes the details of which have been uploaded by the suppliers under sub-section (1) of section 37."

1 What are the details required to be uploaded by the Suppliers under sub-section (1) of Section 37 -

Section 37(1) cast responsibility on every registered person, other than an Input Service Distributor, a non-resident taxable person, a person paying tax under provisions of Section 10 i.e. composition dealers, to furnish the details of outward supplies of goods or services or both effected during tax period electronically in such form and manner as may be prescribed.

The form and manner has been prescribed under Rule 59 of CGST Rule which requires such details in Form GSTR-1 and should include -

(i) invoice wise details of all inter-State and intra-State supplies made to the registered persons;

(ii) invoice wise details of all inter-State supplies with invoice value more than two and a half lakh rupees made to the unregistered persons;

(iii) consolidated taxrate-wise details of all intra-State supplies made to unregistered persons;

(iv) consolidated State-wise and taxrate-wise details of inter-State supplies with invoice value upto two and a half lakh rupees made to unregistered persons;

(v) debit and credit notes, if any, issued during the month for invoices issued previously.

2 How to find the details uploaded by the Suppliers under sub-section (1) of Section 37 -

Sub-rule (3) of Rule 59 of CGST Rules specifies that the details of outward supplies furnished by the supplier shall be made available electronically to the concerned registered persons (recipients) in Part A of FORM GSTR-2A through the common portal after the due date of filing of FORM GSTR-1.

Accordingly, every registered person is now required to view the GSTR-2A made available on the common portal after the due date of filing of Form GSTR-1.

3 What is eligible credit -

The term "eligible credit" is not defined anywhere in the Act or Rules, however the normal meaning can be taken as the Input Tax Credit which is not ineligible to the registered person.

The Input Tax Credit in certain cases is not available and thus such Input Tax Credit will be categorised as ineligible credit. Few instances of such specific ineligibility are -

(i) Goods or services or both mentioned in Section 17(5) subject to respective conditions;

(ii) in respect of inputs held in stock and inputs contained in semi-finished or finished goods held in stock on the day immediately preceding the date from which he becomes liable to pay tax under the provisions of CGST Act, if he has not applied for registration under this Act within thirty days from the date on which he becomes liable to registration;

However, Reversal of Input Tax Credit under Rule 42 and 43 for partly use for the purpose of any business and partly for other purposes or partly use for effecting taxable supplies including zero-rated supplies and partly for effecting exempt supplies can not be termed as ineligible credit as the reversal is for restricted allowance of credit under Section 17(1) and 17(2).

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3 What is eligible credit - (continued…)

Basic conditions of eligibility to claim Input Tax Credit has been prescribed in Section 16 of CGST Act and it specifies that every registered person shall be entitled to take Input Tax Credit in respect of any supply of goods or services or both -

- **(i)** which are used or intended to be used in the course or furtherance of his business; and
- **(ii)** have a tax invoice or debit note issued by a supplier registered under this Act, or such other tax paying documents as may be prescribed; and
- **(iii)** he has received the goods or services or both (Where the goods against an invoice are received in lots or installments, registered person shall be entitled to take credit upon receipt of last lot or installment); and
- **(iv)** not claimed depreciation on the tax component of the cost of capital goods and plant and machinery under the provisions of the Income-tax Act, 1961; and
- **(v)** whose invoice or debit note is not 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 invoice relating to such debit note pertains or furnishing of the relevant annual return, whichever is earlier.

It is also important to note that as per Section 155 of CGST Act, where any person claims that he is eligible for input tax credit under this Act, the burden of proving such claim lie on such person.

4 In order to clarify the provision and its applicability, the Government has issued Circular No.123/42/2019-GST dated 11th November, 2019 and the important clarifications are -

- **(i)** the restriction is not imposed through the common portal and **it is the responsibility of the taxpayer that credit is availed in terms of the said rule and** therefore, the availment of restricted credit in terms of sub-rule (4) of rule 36 of CGST Rules **shall be done on self-assessment basis by the tax payers**;
- **(ii)** The Taxpayers may avail full ITC in respect of IGST paid on import, documents issued under RCM, credit received from ISD etc. which are outside the ambit of sub-section (1) of section 37, provided that eligibility conditions for availment of ITC are met in respect of the same;
- **(iii)** The restriction of 36(4) will be applicable only on the invoices / debit notes on which credit is availed after 09.10.2019.
- **(iv)** The restriction imposed is not supplier wise and the credit available under sub-rule (4) of rule 36 is linked to total eligible credit from all suppliers against all supplies, which are otherwise eligible for ITC, whose details have been uploaded by the suppliers.
- **(v)** The restriction of 20% applies with respect to eligible input tax credit available to the recipient in respect of invoices or debit notes the details of which have been uploaded by the suppliers under sub-section (1) of section 37 **as on the due date of filing of the returns in FORM GSTR-1 of the suppliers for the said tax period.**

EXAMPLE -

Eligible ITC as per Records/Accounts	Eligible ITC as per GSTR-2A (out of 1)	Eligible ITC not appearing in GSTR-2A (out of 1)	Restriction as per Rule 36(4)	Eligible ITC allowed to be taken in GSTR-3B
(1)	(2)	(3)	(4)	(5)
		(1) - (2)	Minimum of (3) or 20% of (2)	(2) + (4)
1,000,000	600,000	400,000	120,000	720,000
1,000,000	700,000	300,000	140,000	840,000
1,000,000	850,000	150,000	150,000	1,000,000

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4 In order to clarify the provision and its applicability, the Government has issued Circular No.123/42/2019-GST dated 11th November, 2019 and the important clarifications are - **(continued…)**

(vi) The balance ITC may be claimed by the taxpayer in any of the succeeding months in proportion to the details of missing invoices are uploaded by the suppliers provided that credit on invoices, the details of which are not uploaded (under sub-section (1) of section 37) remains under 20 per cent of the eligible input tax credit, the details of which are uploaded by the suppliers.

EXAMPLE -

Eligible ITC not appearing in GSTR-2A	Remaining ITC (out of 1)	Eligible ITC in GSTR-2A of next period(s)	Restriction as per Rule 36(4)	Eligible ITC allowed to be taken in GSTR-3B
(6)	(7)	(8)	(9)	(10)
(3) of Earlier Table	(1) - (5) of Earlier Table	out of (6)	Minimum of (7) or 20% of (8)	Minimum of (7) or [(8) + (9)]
400,000	280,000	134,000	26,800	160,800
300,000	160,000	134,000	26,800	160,000
150,000	0	134,000	0	0

5 **Few Unanswered Questions -**

(i) As per Circular issued, the restriction of 36(4) will be applicable where credit is availed after 09-10-2019. As credit is deemed to be availed on submission of GSTR-3B, it appears to be applicable for returns of any period filed after 09-10-2019 implying retrospective applicability (circular extending provision applicability) and discriminating eligibility of ITC for the taxpayers filing return before and after prescribed date.

(ii) In respect of the Taxpayers filing Quarterly GSTR-1, it appears that credit can be taken when it appears in GSTR-2A. In respect of inward supplies received in 1st month of Quarter, as the due date to file GSTR-1 is after the due date of GSTR-3B, the credit can be taken in 4th month having a huge impact on the dealers opted to file Quarterly GSTR-1 and no option to change over periodicity is available in between the year.

(iii) GSTR-2A being a dynamic document and restriction applies as compared to figures appearing in GSTR-2A as on the due date of filing of the returns in FORM GSTR-1 of the suppliers for the said tax period, the filing of GSTR-3B will be done in last 5-6 days i.e. after 12th of succeeding month, adding to server issues.

(iv) Big Question whether GSTR-2A will be updated in real time to get correct figures.

(v) As GSTR-2A does not give date on which it is updated, finding the entries exist on the due date of filing of the return in FORM GSTR-1 is almost impossible and thus putting impossible task to trace GSTR-2A on the due date of filing of the return by each taxpayer.

Thank You