GST UPDATES

CBIC issued a notification on 9th October,2019 to insert rule 36(4) of CGST Rules, 2017.

As per the said notification- "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."

The notification caused a lot of confusion over the method of calculating 20% of the eligible credit available, the cut-off date and also whether it was to be calculated supplier-wise or on a consolidated basis. Since, it is a new provision, 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 CBIC is prompted to issue Circular No. 123/42/2019 on 11th November,2019 to clarify all these aspects.

Let's understand the Clarifications Issued by CBIC Circular-

Issue No. 1: What are the invoices/ debit notes on which the restriction under rule 36(4) of the CGST Rules shall apply?

Clarification: Restriction under Rule-36(4) of CGST Rules is applicable only on those invoices which are required to be uploaded by the supplier u/s 37(1) of CGST Act.

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 Section 37(1), provided that eligibility conditions for availment of ITC are fulfilled in respect of the same.

The restriction of 36(4) will be applicable only on those invoices/ debit notes on which credit is availed after 09/10/2019

Issue No. 2: Whether the said restriction is to be calculated supplier wise or on consolidated basis?
Clarification: Credit as per Sec-36(4) of CGST Rules shall be linked to total eligible credit against supplies received from all the suppliers.

Further, ineligible ITC as per Sec-17(5) shall not be included for calculating 20% of eligible credit.

Issue No. 3: FORM GSTR-2A being a dynamic document, what would be the amount of input tax credit that is admissible to the taxpayers for a particular tax period in respect of invoices / debit notes whose details have not been uploaded by the suppliers?

Clarification: The tax payer has to ascertain the Input Tax Credit from his auto populated FORM GSTR 2A as available on the due date of filing of FORM GSTR-1 under Section 37(1).

Issue No. 4: How much ITC a registered tax payer can avail in his FORM GSTR-3B in a month in case the details of some of the invoices have not been uploaded by the suppliers under subsection (1) of section 37?

Clarification: As per Rule 36(4) of CGST Rules, 2017, ITC for the invoices not uploaded on the GST Portal shall be restricted to 20% of Eligible ITC (i.e. ITC reconciled from GSTR-2A) subject to maximum of Total ITC available. Please refer the illustration below for more clarity.

Issue No.5: When can balance ITC be claimed in case availment of ITC is restricted as per the provisions of rule 36(4)?

Clarification: Taxpayers can claim proportionate ITC as and when the details are uploaded by the suppliers provided that the details which are not uploaded remains under the 20% of Eligible ITC. In other words, ITC to be claimed in subsequent month shall be *Eligible Credit÷1.20* subject to maximum of balance ITC available.

Let us understand the above stated facts with the help of below Illustration-

Particulars	Calculation Method	October (Rs.)	November (Rs.)	December (Rs.)
Total ITC as per books (A)		1,000,000.00	1,000,000.00	1,000,000.00
ITC in 2A (Eligible ITC) (B)		600,000.00	700,000.00	850,000.00
ITC to be Availed (C)	(B+B*20%)	720,000.00	840,000.00	1,000,000.00
Balance	**(A-C)**	**280,000.00**	**160,000.00**	**-**
October Invoice uploaded (D)			320,000.00	80,000.00
Oct ITC to be availed (E)	(D/1.2)*		266,666.67	13,333.33
November Invoice uploaded (F)				250,000.00
Nov ITC to be availed (G)	(F/1.2)*			160,000.00
Total ITC Availed	**(C+E+G)**	**720,000.00**	**1,106,666.67**	**1,173,333.33**
Oct ITC Balance		280,000.00	13,333.33	-
Nov ITC Balance			160,000.00	-
Dec ITC Balance				-
* Subject to maximum of Total ITC as per books.				

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