

Stringent Application of ITC Rules – Can business person Breathe

Restricting Input Tax Credit to 20 % as on 09.10.2019 and further squeezed to 10% from 1.1.2020 will kill the business person or business. Reason is obvious, as most of supplier of goods or services do not file GSTR-1 on due date and consequently recipient of goods or services can not file Form-3B waiting for ITC to appear in Form-2A .

First of all Provision Inserted in Section 43A Rule 36(4) of the CGST Act and Rules ,2019 – Restricting the ITC limit to 20% of the eligible ITC which not as per GSTR-2A.

Notification No. 49/2019 – Central Tax dated 9 October 2019 has announced a major change in availment of Input Tax Credit ('ITC') while filing monthly GST returns Form-3B.

Section 43(A) of CGST Act, 2017 ('the Act') and the recent insertion in rule 36(4) of the CGST Rules, 2017 provides that an assessee can claim 20% of eligible ITC on inward supplies for which details have not been furnished by the outward supplier in its GSTR 1.

Secondly vide Notification No. 75 Central Tax Rate dated 26.12.2019 , by Ninth amendment Rules of CGST,2019

✓ **The limit of 20% of eligible ITC has been reduced to 10%.**

Because of the above amendment , Govt. is further nailing the head of business man to shell out more out of their pocket despite the money blocked in ITC and pay interest and late fees for not filing the Form-3B. it is two way sword on which every sufferer need to sit without any fault just to accomplish the government goals.

What is the fault of recipient of goods or services in GST. Can the Govt. explain . The harsh provision of ITC is being loaded on recipient dealers just to achieve the following objects :

- 1. Detect or prevent the fraud**
- 2. Increase the GST Revenue**

For the above reason , why the business person should suffer and cough up 50% to 60% working capital involved in ITC which he is not able to use because of no reason of their own or execute the two above reasons of the Government.

The Govt. has not only stopped here but slapped further by Inserting new Rule 86A which is as follows vide Notification no. 75 dated 26.12.2019:

“86A. Conditions of use of amount available in electronic credit ledger.

(1) The Commissioner or an officer authorised by him in this behalf, not below the rank of an Assistant Commissioner, having reasons to believe that credit of input tax available in the electronic credit ledger has been fraudulently availed or is ineligible in as much as-

a) the credit of input tax has been availed on the strength of tax invoices or debit notes or any other document prescribed under rule 36-

i. issued by a registered person who has been found non-existent or not to be conducting any business from any place for which registration has been obtained; or

ii. without receipt of goods or services or both; or

b) the credit of input tax has been availed on the strength of tax invoices or debit notes or any other document prescribed under rule 36 in respect of any supply, the tax charged in respect of which has not been paid to the Government; or

c) the registered person availing the credit of input tax has been found non-existent or not to be conducting any business from any place for which registration has been obtained; or

d) the registered person availing any credit of input tax is not in possession of a tax invoice or debit note or any other document prescribed under rule 36,

may, for reasons to be recorded in writing, not allow debit of an amount equivalent to such credit in electronic credit ledger for discharge of any liability under section 49 or for claim of any refund of any unutilised amount.

It means that Commissioner or Asst. commissioner can block the credit lying in Credit ledger of GSTN on the charges mentioned below :

1. Invoice issued by Registered person not in existence or not conducting any business.
2. Invoice without receipt of goods or services .
3. Tax Charged has not been paid to Government.
4. Registered person is not present at address for where he has been registered.
5. Registered person is not having document on which basis he has claimed the ITC.

These amendment would lead to additional compliances for the dealers as under:

- Monthly reconciliation of GSTR 2A and Purchase register
- Follow up with the vendors for uploading the invoices on monthly basis.
- Classification of eligible and ineligible credit in the GSTR 2A
- Impact on working capital and cash flow

- Find out the supplier opted to file the return GSTR-1 on quarterly basis, how the GSTR-2A shall be updated on monthly basis and reconcile with Form-2A.
- Late or non filing of GSTR-1

Practical Issue

- In case, supplier opted to file the return GSTR-1 on quarterly basis, GSTR-2A shall be updated only after the Quarter. It means, ITC can not be claimed for three months.
- Late filing of GSTR-1 or non Filing of GSTR-1. Last date of Filing GSTR is 11th of next month even after that there is no late fees. Dealers are habitual of filing late return and most of them file GSTR-1 along with Form-3B. It means ITC can not be claimed in that particular month and ITC shall be deferred for the next month. Hence extra working capital will be involved.
- Shelling out additional working capital for ITC blocked in 10% capping.
- Additional burden on businessmen of interest and late fees for not filing of Form-3B on due date because of waiting for GSTR-1 to be filed of suppliers.

Conclusion

Author is having the Opinion that GSTR-1 filing should be stringent by way of Late fees or penalty for not filing on due date so that ITC must be available while filing of Form-3B. Quarterly GSTR-1 should be immediately stopped and GSTR-1 filing should be on monthly basis only.

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About the Author:

Author is Sr. Partner of **GRAND MARK & ASSOCIATES** and Domain Head of Goods and Service Tax. He can be reached at sanjeev.singhal@grandmarkca.com.