

GST

NEWSLETTER

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GST Newsletter:
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ARTICLE

COMPLIANCE (COMPLICATIONS) UNDER SECTION 16(2)(D) OF CGST ACT, 2017

Input Tax Credit (ITC) under GST is the GST credit paid and subsequently availed by taxpayers to be set-off against their GST payable. However, not all ITC is available to a taxpayer. Some ITC is ineligible for claim from the time it's incurred by the taxpayer while other ITC become ineligible after availment by way of reversal by the taxpayer.

The various types of ITC subject to reversal after availment are:

1. Rule 42 & 43 – it's the most common type of ITC reversal made due to exempt and Non-GST supplies and ITC used for non-business purposes.
2. Section 18(6) – This ITC reversal pertains to ITC claimed on capital goods which are sold or disposed before the life of the asset is completed.
3. 2nd & 3rd Proviso to Section 16(2)(d) pertains to ITC reversal on invoices which are pending payment even after 180 days from the date of the invoice.

4. ITC claimed wrongly / incorrectly is required to be subsequently rectified by way of reversal in the period the wrong claim is noticed.

Though all reversals of ITC attain significant importance as non-compliance results in interest liability to the taxpayer, one type of reversal stands out in comparison due to possibility of different interpretations. This is the reversal arising from non-payment of dues to the suppliers within 180 days.

The following types of reversal take importance in case of 180 days reversal:

1. Discounts given by supplier to buyer
2. ITC remaining un-claimed by the buyer

Discounts given by suppliers are usually of two types:

- (1) **Trade discount:** This type of discount is provided as part of the trade and is usually agreed to between the supplier and retailer beforehand. This also shown in the Tax Invoice raised by the supplier to the buyer.
- (2) **Cash discount:** This type of discount is typically given for payment terms. This is never shown in Tax Invoice and may or may not feature in the agreement between supplier and buyer.

Both types of discounts have GST implications under the CGST Act, 2017 and KGST Act, 2017.

GST law provisions:

As per Section 15(3) of the CGST and KGST Act, 2017: *The value of the supply shall not include any discount which is given—*

(a) before or at the time of the supply if such discount has been duly recorded in the invoice issued in respect of such supply; and

(b) after the supply has been effected, if—

(i) such discount is established in terms of an agreement entered into at or before the time of such supply and specifically linked to relevant invoices; and

(ii) input tax credit as is attributable to the discount on the basis of document issued by the supplier has been reversed by the recipient of the supply.

From the above provision we can infer that discounts provided results in a reduction of the

taxable value of the supply and thus the Input Tax Credit (ITC) that can be claimed on the same.

The reduction in the supply value can happen either at the time of making the sale or after making the sale if it has been agreed upon between the supplier and buyer and the ITC claimed by the buyer has been appropriately reduced.

Hence, GST provision does not distinguish between trade discounts and cash discounts provided that above requirements are complied with.

As per 2nd & 3rd Proviso to Section 16(2)(d) of the CGST / KGST Acts, 2017:

Provided further that where a recipient fails to pay to the supplier of goods or services or both, other than the supplies on which tax is payable on reverse charge basis, the amount towards the value of supply along with tax payable thereon within a period of one hundred and eighty days from the date of issue of invoice by the supplier, an amount equal to the input tax credit availed by the recipient shall be added to his output tax liability, along with interest thereon, in such manner as may be prescribed:

Provided also that the recipient shall be entitled to avail of the credit of input tax on payment made by him of the amount towards the value of supply of goods or services or both along with tax payable thereon.

Hence, as per the above, any ITC claimed on an invoice for which payment has not been made for 180 days from the invoice date shall have to be paid back by way of reversal along with interest. The ITC to be reversed will be proportionate to the non-payment of the dues. And in case of subsequent payment of the dues, then the ITC so reversed can be claimed back without any time limit for reclaiming it.

For example: A purchase is made on 1st March 2019 for Rs. 10,000 plus 1,800 GST. On 1st May 2019, the buyer pays Rs. 5,000 (inclusive of GST) to the supplier for the above invoice. But balance payment is not done till 31st August 2019. The 180 days period will end on 28th August 2019. Hence, in the GSTR 3B of August month the buyer is required to reverse ITC of Rs. 1,037 (11,800 – 5,000 * 18/118).

In the above example, if we consider that the supplier has given Rs 1000 discount after supply takes place. Balance payable is only Rs 5800. If we

assume the Rs 1000 includes GST also, recipient needs to reverse ITC of Rs 153 subject to provisions of Section 15(3)(b). If it does not include GST and discount is given only on the base value and supplier also supplier does not fulfill the condition of section 15(3)(b). In this case value of supply is Rs 10000 and supplier needs to pay GST on 10000.

In the hands of recipient, value of supply received as per invoice is Rs 10000 plus GST and discount received subsequently is Rs 1000. So net payable to supplier is only Rs. 9000 plus GST. The question of whether recipient is required to reverse ITC on Rs 1000 under section 16(2)(d) because recipient will not be making any payment to the supplier or not needs clarification.

Non-compliance of Section 15:

In many cases, it can be found that the supplier has offered a discount to the buyer which is neither shown in the tax invoice nor is it agreed upon between them. This is common in trade practice and is usually dependent on the supplier and buyer relationship.

In such a case, a discount is provided at the time of making payment and the supplier simply receives the invoice value of the supply less the discount he has agreed to provide.

Usually the supplier raises a Commercial / Financial credit note which will not contain the GST amount and will not be as per Section 34 read with Rule 53 of the CGST / KGST Acts and Rules. This will not result in a change in the supplier's liability i.e. the taxable value remains as stated in the invoice and the GST on the same would also have been paid by him as stated in the invoice. For the buyer too, there is no change in the value and ITC to be claimed but only a reduction in the amount payable to supplier.

In order to understand the impact of 180 days on these types of discounts, we need to analyze the meaning of 'payment' and 'value of supply' in this scenario.

As clearly stated in Section 15, the value of supply will categorically not include discount if it does not comply with section 15 provisions. Hence, it's understood that the entire value of supply along with the GST amount has to be paid to the supplier within 180 days of the invoice date in order for the buyer to be eligible for full claim of ITC and the discount offered shall not be reduced from the value of supply.

In case of payment to be made, the Merriam webster dictionary defines pay as 'to make due return to for services rendered or property delivered' and 'to discharge indebtedness for'. The term payment is also not defined in GST acts. It's also to be noted that the second proviso to Section 16 does not state the mode of payment to be made.

Now, it must be understood that in accounting for transactions like these, the supplier usually credits the buyer's trade receivable account and debits the discount as an expense to his profit and loss account thus discharging the indebtedness from the buyer. Hence, if commercial or financial credit note is issued in order to settle such discounts, then it can be considered as payment for the purpose of payment within 180 days. The same interpretation was held for Service Tax as clarified in Board Circular No. 122/3/2010-ST dated 30/4/10.

Reclaiming Credit after Making Payment

ITC reversed under section 16(2)(d) can be reclaimed whenever recipient makes payment to the supplier. This is creating one more problem for compliance.

As per Sub-rule 4) in Rule 36 of the CGST / KGST Rules, 2017, a taxpayer is eligible to claim ITC only if the same has been uploaded by the supplier in their GSTR 1 plus 20% of the ITC not uploaded (10% from January 2020)

When the recipient is reclaiming the credit after making payment, these invoices will not be appearing GSTR 2A of recipient. For example, value of ITC appearing in GSTR 2A is Rs 100000 and reclaiming credit is Rs 50000. We have to club these two and claim ITC of Rs 150000 in GSTR 3B under all other ITC. There is no provision in GSTR 3B to show this reclaiming credit separately.

Since the ITC is restricted to the extent of 110% of ITC appearing in GSTR 2A, this will invite notice from department seeking clarification. If it is not clarified, then department is going ahead and blocking entire ITC lying in the credit ledger.

Interest payable on 180 days non-payment:

As per 3rd Proviso to Section 16(2)(d), interest shall be payable on any ITC being reversed due to non-payment of dues within 180 days. The interest payable is 18% per annum as per Section 50(1) and from the date of invoice for which payment is not made till the date it's reversed in GSTR 3B. It's to be noted that the GST Council had proposed removal of interest payment for 180 days non-payment in the 28th GST Council meeting but the proposal was never implemented by change in law.

CASE LAWS

Facts of the case: M/S. HITACHI POWER EUROPE GMBH (AAR, Karnataka)

The applicant is a private limited company located in Europe and having a project office in India as defined in Foreign Exchange Management Act, 1999. The project office has a few Expats who are actually under the payroll of the HO in Europe but are shown as being paid through the project office for the purpose of Indian Income Tax laws and accounting disclosures. The company has approached the AAR in order to know whether the accounting entry, in the project office books, of the salary paid to the HO employees is a supply of services or not.

Provisions of the law:

As. Per Sr. No. 2 (f) of the FEMA Regulations, a "Project Office" means a place of business in India to represent the interests of the foreign company executing a project in India but excludes a Liaison Office.

As per the provisions of the Companies Act, 2013, applicant is required to maintain its financial books of accounts in a manner which would reflect a true and fair view of the business of the Company in India.

As per Schedule III of the CGST Act, 2017 Services by an employee to the employer in the course of or in relation to his employment shall neither be considered as a supply of goods nor a supply of services.

Ruling:

The AAR held that a project office can be considered as a branch office set up with the limited purpose for executing a specific project and to execute the project. The Project Office can enter into transactions for receipt of supply of goods and services which would enable them to complete the project. That a project office in an extension of the foreign Head Office, and as in the subject case shall carry on all activities relating and incidental to execution of the Project in India.

Thus, we find that the expat employees are employees of the employer i.e. the Head Office and since the Project Office is an extension of the Head Office, there is a relation of employer and employee between the Project Office and the expat employees. Hence, no GST is applicable.

Facts of the case: M/S. NCS PEARSON INC. (AAR, Karnataka)

The applicant is a private limited company engaged in providing online exams to examinees both for free and for a fee. The required content, questions and material are provided by the customers of the applicant and the evaluation procedure is also stated by these customers. The type of test provided by the applicant are – 1. Self-administered test at the examinee's convenience. 2. Self-administered test at a designated center with an invigilator with automated test evaluation. 3. Similar to type 2 but with automated and human evaluation. The applicant has approached the AAR in order to know if the test types 2 and 3 can also be considered as Online Information and Database Retrieval Services'.

Provisions of the law:

As per Section 14(1) of the IGST Act, 2017 On supply of online information and database access or retrieval services by any person located in a non-taxable territory and received by a non-taxable online recipient, the supplier of services located in a non-taxable territory shall be the person liable for paying integrated tax on such supply of services.

Ruling:

The AAR held that:

1. In case of test type 2, We note here that human activity on the side of the supplier is focused on the whole environment, i.e. the whole test center and not on specific need of individual test takers. Hence, since the main object of the whole activity is to take online tests, so the principal supply would be OIDAR service provided by the applicant to non-taxable online recipients and is taxable in India.
2. In case of test type 3, it's similar to Type 2 tests with the only difference being these tests contain a mixture of multiple-choice questions and analytical writing assessment sections, i.e. essay based questions. Hence, Type 3 tests require more than minimal human intervention in order to complete the provision of the service and falls outside the purview of OIDAR and is exempt from IGST as per SI No. 10 of Notification No. 09/2017-IGST (R) dated 28.06.2017.

NOTIFICATIONS AND CIRCULARS FOR THE MONTH OF JUNE 2020

- **Fourteen Central Tax Notification.**
- **Two Integrated Tax Notification.**
- **One Union Territory Notification.**
- **Three Central Tax Circulars.**
- **One Central Tax Order.**

Sl. No	Subject	Notifications/Circulars No. Date of Issue
1.	Seeks to amend notification no. 52/2020-Central Tax in order to provide conditional waiver of lat fees for the period from July, 2017 to July, 2020.	57/2020-Central Tax dated 30.06.2020
2.	Seeks to amend notification no. 46/2020-Central Tax in order to further extend period to pass order under Section 54(7) of CGST Act till 31.08.2020 or in some cases upto fifteen days thereafter.	56/2020-Central Tax dated 27.06.2020
3.	Seeks to amend notification no. 35/2020-Central Tax in order to extend due date of compliance which falls during the period from "20.03.2020 to 30.08.2020" till 31.08.2020.	55/2020-Central Tax dated 27.06.2020
4.	Seeks to extend due date for furnishing FORM GSTR-3B for supply made in the month of August, 2020 for taxpayers with annual turnover up to Rs. 5 crore.	54/2020- Central Tax ,dt. 24-06-2020
5.	Seeks to provide relief by waiver of late fee for delay in furnishing outward statement in FORM GSTR-1 for tax periods for months from March, 2020 to June, 2020 for monthly filers and for quarters from January, 2020 to June, 2020 for quarterly filers	53/2020- Central Tax ,dt. 24-06-2020
6.	Seeks to provide one time amnesty by lowering/waiving of late fees for non furnishing of FORM GSTR-3B from July, 2017 to January, 2020 and also seeks to provide relief by conditional waiver of late fee for delay in furnishing returns in FORM GSTR-3B for tax periods of February, 2020 to July, 2020.	52/2020- Central Tax ,dt. 24-06-2020
7.	Seeks to provide relief by lowering of interest rate for a prescribed time for tax periods from February, 2020 to July, 2020.	51/2020- Central Tax ,dt. 24-06-2020
8.	Seeks to make seventh amendment (2020) to CGST Rules.	50/2020- Central Tax ,dt. 24-06-2020
9.	Seeks to bring into force Sections 118, 125, 129 & 130 of Finance Act, 2020 in order to bring amendment to Sections 2, 109, 168 & 172 of CGST Act w.e.f. 30.06.2020.	49/2020- Central Tax ,dt. 24-06-2020
10.	Seeks to make sixth amendment (2020) to CGST Rules.	48/2020- Central Tax ,dt. 19-06-2020
11.	Seeks to amend Notification No. 40/2020 – Central Tax dated 05.05.2020 in respect of extension of validity of e-way bill generated on or before 24.03.2020 (whose validity has expired on or after 20th day of March 2020) till the 30th day of June.	47/2020- Central Tax ,dt. 09-06-2020

Sl. No	Subject	Notifications/Circulars No. Date of Issue
12.	Seeks to extend period to pass order under Section 54(7) of CGST Act.	46/2020- Central Tax ,dt. 09-06-2020
13.	Seeks to extend the date for transition under GST on account of merger of erstwhile Union Territories of Daman and Diu & Dadar and Nagar Haveli.	45/2020- Central Tax ,dt. 09-06-2020
14.	Seeks to give effect to the provisions of Rule 67A for furnishing a nil return in FORM GSTR-3B by SMS	44/2020- Central Tax ,dt. 08-06-2020
15.	Seeks to provide relief by lowering of interest rate for a prescribed time for tax periods from February, 2020 to July, 2020.	05/2020-Integrated Tax, dt. 24-06-2020
16.	Seeks to bring into force Section 134 of Finance Act, 2020 in order to bring amendment to Section 25 of IGST Act w.e.f. 30.06.2020.	04/2020-Integrated Tax, dt. 24-06-2020
17.	Seeks to provide relief by lowering of interest rate for a prescribed time for tax periods from February, 2020 to July, 2020.	02/2020-Union Territory Tax, dt. 24-06-2020
18.	Clarification in respect of various measures announced by the Government for providing relief to the taxpayers in view of spread COVID-19	141/11/2020 Circular no, dt .10-06-2020
19.	Clarification in respect of levy of GST on Director's Remuneration.	140/10/2020 Circular no, dt.10-06-2020
20.	Clarification on Refund Related Issues.	139/09/2020 Circular no,d.10-06-2020
21.	Seeks to extend the time limit for filing an application for revocation of cancellation of registration for specified taxpayers.	Order No. 01/2020- Central Tax,d.25-06-2020

DUE DATES OF GST FOR THE MONTH OF JULY 2020

JULY 2020						
Sunday	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday
			1	2	3	4
5	6	7	8	9	10 *GSTR-7 &GSTR-8	11 *GSTR-1
12	13	14	15	16	17	18
19	20 *GSTR-3B/5/5A	21	22	23	24	25
26	27	28	29	30	31 *GSTR-1	

* For taxpayers with Annual Turnover more than Rs. 1.50 Crores or who has opted for monthly return.
 * For taxpayers with Annual Turnover less than Rs. 1.50 Crores and who have opted for quarterly return.

RELAXATION IN LATE FILING OF RETURNS AND LATE PAYMENT OF TAX:

Turnover > 5 Crores	Turnover >1.5 Crores and <5 Crores	Turnover < 1.5 Crores
No relaxation for GSTR 3B, it's to be filed by 20th July 2020 . Maximum Rs. 500 if filed before 30th September 2020	No late fees on GSTR 3B if filed within 23rd September 2020 and maximum Rs. 500 if filed after 30th September 2020	No late fees on GSTR 3B if filed within 23rd September 2020 and maximum Rs. 500 if filed after 30th September 2020
No interest on GSTR 3B if filed within 20th July 2020	No interest on GSTR 3B if filed within 23rd September 2020	No interest on GSTR 3B if filed within 23rd September 2020
Interest of 18% p.a. if filed after 20th July 2020	Interest of 9% p.a. between 23rd September & 30th September 2020 and 18% p.a. thereafter.	Interest of 9% p.a. between 23rd September & 30th September 2020 and 18% p.a. thereafter.
No late fee on GSTR 1 if filed within 05th August 2020	No late fee on GSTR 1 if filed within 05th August 2020	No late fee on GSTR 1 if filed within 05th August 2020

Disclaimer:

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