

GST NEWSLETTER

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GST Newsletter:
Compiled and Edited by

VKCA INDIRECT TAX DIVISION

CA PRASANNA K S | ADV. T. R. RAJESH

ADV. PRATEEK J | PRAKRUTHI C

ARTICLE

RESTRICTION ON CLAIM OF ITC

The claim of Input Tax Credit (ITC) is crucial in indirect taxes and forms a large part of the GST laws in the country in terms of compliances, restrictions, reversals and refunds. False claim of ITC is rampant and poses a major hurdle in curbing tax evasion. Hence, it's not a surprise that the GST department has introduced a new law restricting ITC claim further by taxpayers.

Rule 86B has been inserted into the CGST Rules, 2017 and KGST Rules, 2017 with effect from 1st January, 2021 to taxpayers. Under this, the ITC claim by a taxpayer cannot exceed 99% of the total output tax liability and the remaining 1% has to be mandatorily paid by cash.

Exceptions made for Rule 86B:

The CBIC has exempted taxpayers who fulfill the following aspects from paying 1% by cash:

1. **50 lacs taxable supply:** Taxpayers having taxable supply of less than Rs. 50 lacs per month are not required to pay 1% tax in cash. However, this is applicable on a monthly basis and if the taxable supply exceeds Rs. 50 lacs in the next month, then 1% tax has to be paid by cash. Further, the taxable supply is the net supply i.e., after sales returns and will also not include exempt and zero-rated supplies.
2. **Income Tax of more than Rs. 1 lac:** If the taxpayer has paid income tax of more than Rs. 1 lac in each of the last 2 financial years, then 1% tax need not be paid by them. This is applicable even if the Karta or the managing director or any of its two partners, whole-time Directors, Members of Managing Committee of Associations or Board of Trustees have also paid Rs. 1 lac in each of the last 2 financial years.
3. **Refund of Input Tax Credit:** If the taxpayer has obtained refunds of ITC incurred for making zero-rated supplies or inverted duty supplies then mandatory 1% tax payment is not applicable. However, the refund obtained should exceed Rs. 1 lac rupees in the preceding financial year to be eligible for this exemption. Further, the exemption is available if either zero-rated or inverted duty refund has been obtained.
4. **Cumulative tax payment exceeds 1%:** If the total tax paid in cash by the taxpayer up to the current month in the current financial year exceeds 1% of the total output tax payable for up to the current month, then they are exempted from payment of tax by cash.

For Ex: For the month of January 2021, the total tax payable is Rs. 1 lac and the taxpayer is not exempted from the payment of 1% tax by cash under any other exceptions. If for the periods April 2020 – December 2020 the total output tax payable is Rs. 5 lacs and if they have paid a total tax of Rs. 10,000 in cash, then the taxpayer need not pay the tax liability in cash for January 2021 as the cash paid of Rs. 10,000 exceeds 1% of the total tax liability from April 2020 - January 2020 Rs. 6,000 (Rs. 6 lacs * 1%). They can utilize the ITC fully to pay the Rs. 1 lacs output liability.
5. The registered person is the following
 - (i) Government Department; or
 - (ii) a Public Sector Undertaking; or
 - (iii) a local authority; or
 - (iv) a statutory body:

Points to be considered:

1. GSTIN or PAN based taxable supplies:

The provisions state that if the taxable turnover exceeds Rs. 50 lacs then the registered taxpayer shall be liable to pay 1% of the tax with cash. The word 'registered taxpayer' means any person registered under the GST Acts. Since each registration, regardless of the PAN, is distinct as per the state, the limit of Rs. 50 lacs shall be applied on a GSTIN level not a PAN level.

2. RCM effect:

In case of Reverse Charge Mechanism (RCM) payments on inward supplies the tax is required to be paid in cash. However, the taxpayers should not consider such cash payment as part of the 1% tax required to be paid by cash.

3. TDS / TCS receivers under GST:

Certain taxpayers make supplies for which the GST payable to them is liable to tax deduction or collection. The deductor/collector also files a return (GSTR 7/8) disclosing the amount of TDS/TCS on that transaction. On acceptance of this TDS/TCS credit, the amount shall be credited to the cash ledger of the taxpayer. The taxpayer can utilize this cash for the payment of the 1% tax liability.

4. Taxable turnover payable under RCM:

The GST on certain taxable supplies is required to be paid by the recipient under RCM instead of being collected by the supplier (ex: security manpower services). However, this still constitutes a taxable supply for the supplier of such goods or services even though the recipient is paying the tax and will be counted for the limit of Rs. 50 lacs per month.

Impact:

The government's efforts to curb fake invoicing and tax evasion has resulted in stricter restrictions in compliances. This has driven up compliance cost directly and indirectly in this regard. However, the feasibility and efficacy of such measures during the COVID pandemic is to be seen, especially when businesses are still riling under economic losses.

CASE LAWS

Facts of the case: M/S. THE CAPITAL COMMERCIAL CO-OP. (SERVICE) SOCIETY LIMITED – AAR GUJRAT

The applicant is a registered entity under GST and collects amounts from its members for maintenance of the commercial complexes. The applicant collects amounts towards "Common Maintenance Fund (Deposit)" @ ₹ 250/- per square foot of built-up area for future supply of services viz. maintenance, repair etc. The "Common Maintenance Fund (Deposit)" and is non-refundable in nature and will be used for specified purposes of the society bye-laws. The applicant has approached the AAR asking if such deposit is taxable to GST and if so, what is the time of supply.

Provisions of the law:

As Per Section 7(1) the CGST Act, 2017:

For the purposes of this Act, the expression "supply" includes-

(a) all forms of supply of goods or services or both such as sale, transfer, barter, exchange, licence, rental, lease or disposal made or agreed to be made for a consideration by a person in the course or furtherance of business.....

As per Section 2(31) of the CGST Act, 2017:

"consideration" in relation to the supply of goods or services or both includes..... Provided that a deposit given in respect of the supply of goods or services or both shall not be considered as payment made for such supply unless the supplier applies such deposit as consideration for the said supply;

Ruling:

The AAR-Gujrat held that:

1. The deposit is collected as non-returnable common maintenance fund and such deposits can be considered for such supply of service as mentioned in the bye-laws and, hence, will be liable to tax.
2. The amount collected towards the common maintenance fund/deposit do not form part of consideration towards supply of services at the time of collection, however, the amounts so utilized for provision of service are liable to GST at the time of actual supply of service.

Facts of the case: M/S. SPARSH OHC MANPOWER SERVICE – AAR GUJRAT

The applicant engaged in the service of supply/ appointing doctors, nurses and administrative staff to corporate entities (Factory/ plant) The applicant's contention is that the said service is covered under Sr. No.74 of the Notification No. 12/2017-CT(Rate) dated 28.06.2017 and is exempted from payment of GST.

Provisions of the law:

As per entry No. 74 of Notification No. 12/2017-CT (Rate) dated 28.06.2017 Any services of diagnosis or treatment or care for illness, injury, deformity, abnormality or pregnancy in any recognized system of medicines in India provided by a hospital, nursing home, sanatorium or any other institution is exempted from GST.

Ruling:

The AAR-Gujrat held that service of supply of doctor, nursing staff, ambulances and other administrative staff to the corporate entity for medical care of their staff does not get covered under the Sr. No.74 of exemption Notification No. 12/2017-CT (Rate) dated 28.06.2017. Therefore, the said services of the applicant do not qualify under the definition of 'healthcare service'. Further, applicant's office/ establishment does not get qualified under the definition of 'clinical establishment' given in the para (zg) and (s) respectively of Notification No. 12/2017-CT (Rate) dated 28.06.2017. Therefore, the services provided by the applicant are taxable under GST

NOTIFICATIONS AND CIRCULARS FOR THE MONTH OF DECEMBER 2020

- Six Central Tax Notification.
- One Central Tax Circular.

Sl. No	Subject	Notifications/Circulars No. Date of Issue
1.	Seeks to extend the time limit for furnishing of the annual return specified under section 44 of CGST Act, 2017 for the financial year 2019-20 till 28.02.2021.	95/2020-Central Tax dated 30.12.2020
2.	Seeks to make the Fourteenth amendment (2020) to the CGST Rules.2017.	94/2020-Central Tax dated 22.12.2020
3.	Seeks to waive late fee for FORM GSTR-4 filing in UT of Ladakh for Financial year 2019-20.	93/2020-Central Tax dated 22.12.2020
4.	Seeks to bring into force Sections 119,120,121,122,123,124,126,127 and 131 of Finance Act, 2020(12 of 2020).	92/2020-Central Tax dated 22.12.2020
5.	Seeks to extend the due dates for compliances and actions in respect of anti-profiteering measures under GST till 31.03.2021.	91/2020-Central Tax dated 14.12.2020
6.	Seeks to make amendment to Notification no. 12/2017- Central Tax dated 28.06.2017.	90/2020-Central Tax dated 01.12.2020
7.	Waiver from recording of UIN on the invoices for the months of April 2020 to March 2021.	144/14/2020-GST dated 15.12.2020

DUE DATES OF GST FOR THE MONTH OF JANUARY 2021

JANUARY 2021						
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 *GSTR-1	14	15	16
17	18 CMP-08	19	20 GSTR-3B & 5/5A	21	22 GSTR-3B	23
24	25	26	27	28	29	30
31						

* 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.

* For taxpayers with Annual Turnover more than Rs. 5 Crores.

* For taxpayers with Annual Turnover less than Rs. 5 Crores.

Disclaimer:

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