

Input Tax Credit ('ITC') - Trajectory of Issues and Resolutions

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It has been 5 years since the implementation of GST in India and Input Tax credit ('ITC') eligibility has been the most debated and discussed aspect of GST. One of the key objectives of GST in India was to avoid cascading effect of tax and to allow seamless credits in the supply chain, ultimately reducing the cost of goods and services to the end consumer. How far the said objective has been achieved would be a point for deliberation.

Under GST, the ITC scheme has been designed to allow credits as well as to curb fraudulent practices. There have been many issues under GST law pertaining to ITC, where the Government has amended the law or clarified the issue to resolve the ambiguities and ease out the availment of ITC.

The GST law originally envisaged matching of invoices before availing corresponding ITC. However, due to issues with the GST Portal, this provision was kept in abeyance. Subsequently, in a move towards achieving the objective of allowing the ITC only on the invoices as disclosed by the supplier, ITC was required to be availed on provisional basis and was available to the extent invoices are appearing in FORM GSTR 2A/ GSTR 2B (i.e. disclosed by the supplier in his outward supply returns) plus certain percentage of this matched ITC from October 2019. This resulted in complicated calculations and required tracking of ITC on invoices appearing in returns of outward supplies of the suppliers coupled with certain ad hoc assumptions. The provisions relating to matching invoices, as originally envisaged, never saw the daylight. But the exercise of calculating eligible and available ITC on monthly basis became a tedious task for taxpayers. Subsequently, the Government further amended the provisions to allow ITC only on the invoices appearing in FORM GSTR 2B from January 2022, thus, making availment of ITC more stringent but simpler.

For FY2017-18 and FY2018-19, despite the provisions relating to claim of ITC on invoice matching basis being in abeyance, the GST authorities have issued several notices on mismatch of ITC availed by taxpayers in FORM GSTR-3B vis-à-vis FORM GSTR-2A. Recently, the Government has issued circular no. 183 containing guidelines to determine availability of ITC in cases of differences between ITC claimed in GSTR 3B and ITC as available in GSTR 2A for the said years, basis other supporting documents and details.

Another issue plaguing the industry is fulfillment of condition of payment of tax to the Government exchequer by the supplier, in the absence of any formal tracking mechanism. The Government has now

introduced rule 37A in the CGST Rules, providing that such tracking can be done based on status of filing of FORM GSTR 3B of supplier. In case of non-filing of FORM GSTR 3B by supplier for the period of relevant supply, by 30th September following the end of financial year, taxpayer is now required to reverse ITC availed in the GSTR 3B to be filed on or before 30th November following the end of financial year and can re-avail ITC after supplier files FORM GSTR 3B.

There was an ambiguity as to whether the interest would be applicable only on wrong avilment of ITC, which was not utilised. The Government has amended the law retrospectively to clarify that interest is applicable on wrong avilment and utilization of ITC.

Despite the above-mentioned clarifications/ amendments which have ironed out some of the creases in eligibility and avilment of ITC, several other ITC related issues still needs addressing. To list a few cases where the ITC on legitimate business transactions is disputed or restricted, ITC on marketing material/ free samples, ITC on CSR expenses or ITC on construction of immovable properties, which are used for outward supply such as malls, hotels, ports, etc. come on top of the list.

The industry is hopeful that the Government will hear their plea and will work toward resolving the balance ITC related issues to achieve the objective of seamless credit flow in the upcoming budget.