

Tax Alert

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# Amendments made in GST Law made effective from 01.10.2022



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## Update on Notification

### Whether Form GSTR-2B communicates matched ITC?

In order to give complete statutory backing to the Government's intention of allowing ITC in respect of tax paid invoices, the system of online matching was automated by way of (i) imposing restrictions in furnishing of Form GSTR-1, (ii) linking e-invoicing portal with Form GSTR-1 so that taxpayers not resort to the practice of not furnishing details of invoices to save the payment of taxes. The focus got shifted entirely from initiating matching post filing of valid return to communication of matched results in Form GSTR-2B.

### Amendments made effective from 01.10.2022

Vide Finance Act, 2022, sections 42, 43 and 43A were omitted w.e.f. a date to be notified. Accordingly, consequential amendments were made in section 16(2), 37, 38 and 41 of the GST Act w.e.f. a date to be notified. These amendments are now notified w.e.f. 01.10.2022 vide Notification No. 18/2022-CT dated 28.09.2022 w.e.f. 01.10.2022. As a consequence, rule 69 to 77 and 79 have been omitted from the statutory paper book vide NN/19/2022-CT dated 28.09.2022. Read in detail about these amendments below:

1. The amended provisions of section 16(2) reads as under:

#### 16. Eligibility and conditions for taking input tax credit:-

(2) Notwithstanding anything contained in this section, no registered person shall be entitled to the credit of any input tax in respect of any supply of goods or services or both to him unless,-

- a) he is in possession of tax invoice or debit note issued by a supplier registered under this Act, or such other tax paying documents as may be prescribed;
- <sup>1</sup>(aa) the details of the invoice or debit note referred to in clause (a) has been furnished by the supplier in the statement of outward supplies and such details have been communicated to the recipient of such invoice or debit note in the manner specified under section 37;]
- b) He has received the goods or services or both.
- <sup>2</sup>[(ba) the details of input tax credit in respect in respect of the said supply communicated to such registered person under section 38 has not been restricted;]
- c) Subject to provisions of section 41 <sup>3</sup>[\*\*\*], the tax charged in respect of such supply has been actually paid to the Government, either in cash or through utilization of

input tax credit admissible in respect of said supply; and

- d) He has furnished return under section 39:

**Rule 36(4):** No input tax credit shall be availed by a registered person in respect of invoices or debit notes the details of which are required to be furnished under sub-section (1) of section 37 unless,-

- a) the details of such invoices or debit notes have been furnished by the supplier in the statement of outward supplies in FORM GSTR-1 or using the invoice furnishing facility; and
  - b) The details of <sup>4</sup>[input tax credit in respect of] such invoices or debit notes have been communicated to the registered person in FORM GSTR-2B under sub-rule (7) of rule 60."
2. Condition for entitled to ITC as per section 16(2) (aa) provided that invoice shall be fed into the online system by the supplier by way of furnishing statement of outward supplies in Form GSTR-1 and the said details shall also be communicated to the recipient. As per the manner of communication prescribed in Rule 60, details furnished in Form GSTR-1 are communicated in dynamic statement of Form GSTR-2A as well as static statement of Form GSTR-2B. However, Rule 36(4) provided that ITC shall be availed in respect of amounts communicated in Form GSTR-2B which led to various thoughts regarding eligibility to avail ITC in respect of invoices appearing in Form GSTR-2A but not in Form GSTR-2B.
  3. Now, an additional condition for entitlement to ITC has been inserted which provides that ITC cannot be availed in respect of invoices which are communicated as "not available" in Form GSTR-2B. At the same time, rule 36(4) has been amended to clarify that it communicates details of ITC. With these amendments, statutory backing is strengthened to Rule 36(4) which provides that ITC shall be availed in respect of invoices which are communicated in Form GSTR-2B.

<sup>1</sup> Inserted by the Finance Act, 2021, **w.e.f. a date to be notified.** Notified vide Notification No. 39/2021 Central Tax w.e.f. 01.01.2022

<sup>2</sup> Inserted by the Finance Act, 2022, **w.e.f. a date to be notified.** Notified vide NN 18/2022-CT dated 28-9-2022, **w.e.f. 1-10-2022.**

<sup>3</sup> The words "a[or section 43A]" omitted by the Finance Act, 2022, **w.e.f. a date to be notified.** Notified vide NN 18/2022-CT dated 28-9-2022, **w.e.f. 1-10-2022.**

<sup>4</sup> Inserted by the Central Goods and Services Tax (Second Amendment) Rules, 2022 vide Notification No. 19/2022-Central Tax, w.e.f. 1-10-2022



## Update on Notification

4. Section 38 has been entirely substituted for following:

**“Communication of details of inwards supplies and input tax credit.-**

- (1) The details of outward supplies furnished by the registered persons under sub-section (1) of section 37 and of such other supplies as may be prescribed, and an auto-generated statement containing the details of input tax credit shall be made available electronically to the recipients of such supplies in such form and manner, within such time, and subject to such conditions and restrictions as may be prescribed.
- (2) The auto-generated statement under sub-section (1) shall consist of—
- a) details of inward supplies in respect of which credit of input tax may be available to the recipient; and
  - b) details of supplies in respect of which such credit cannot be availed, whether wholly or partly, by the recipient, on account of the details of the said supplies being furnished under sub-section (1) of section 37,-
    - (i) by such registered person within such period of taking registration as may be prescribed; or
    - (ii) by any registered person, who has defaulted in payment of tax and where such default has continued for such period as may be prescribed; or
    - (iii) by any registered person, the output tax payable by whom in accordance with the statement of outward supplies furnished by him under the said sub-section during such period, as may be prescribed, exceeds the output tax paid by him during the said period by such limit as may be prescribed; or
    - (iv) by any registered person who, during such period as may be prescribed, has availed credit of input tax of an amount that exceeds the credit that can be availed by him in accordance with clause (a), by such limit as may be prescribed; or
    - (v) by any registered person, who has defaulted in discharging his tax liability in accordance with the provisions of sub-section (12) of section 49 subject to such conditions and restrictions as may be prescribed; or
    - (vi) by such other class of person as may be prescribed.”

### Paksh Comments:

5. In our view, as a result of substituted section 38:

- (i) A complete statutory backing is given to Form GSTR-2B.
- (ii) It is notable that circumstances in which ITC may be communicated as “not available” are yet to be prescribed. Therefore, taxpayers are advised to take proper decision while ensuring compliances for the tax period September 2022.
- (iii) In case where supplier furnished statement of outward supplies in Form GSTR-1 and details thereof are communicated to recipient in Form GSTR-2B, it is notable that the same would be categorized as “available” in said tax period. However, if the supplier does not file his return in Form GSTR-3B, there would be violation of section 16(2)(c) which does not entitle a person to avail ITC if tax in respect thereof is not paid by the corresponding supplier. Therefore, section 38(2)(b)(iii) cannot be read in isolation. **It would be interesting to see whether this ITC would be communicated as available in Form GSTR-2B in first tax period or not and if communicated, whether it would later on be categorized as “not available” if default continues for prescribed tax periods.**

Note: it is notable that:

- a) In Form GSTR-2A, the remark in column GSTR-3B would be “not filed”, and
  - b) In the light of restrictions imposed in filing of Form GSTR-1 for a tax period if GSTR-3B for previous tax period is not filed, these types of cases have effectively been reduced to one tax period only. Therefore, taxpayers would be having enough information to ensure compliance with conditions of section 16(2) (C).
- (iv) Section 38(2)(b)(iv) corresponds to former Rule 36(4) which provided for a cap of 20% (later on reduced to 10% and then to 5%) over ITC appearing in Form GSTR-2A. It is expected that Government would prescribe such kind of limits to provide slight flexibility in provisions for availing ITC.
6. Presently, instruction 2(b) to Form GSTR-2B mentions following circumstances in which ITC is communicated as restricted. However, it is notable that these circumstances neither finds its mention in section 38(2)(b) nor prescribed till date. These are:
- (i) Invoice or debit note for supply of goods or services or both where the recipient is not entitled to input tax credit as per the provisions of sub-section (4) of Section 16 of CGST Act, 2017.
  - (ii) Invoice or debit note where the supplier (GSTIN) and place of supply are in the same state while recipient is in another state.



## Update on Notification

7. The substituted section 41 reads as under:

### 41. Availment of input tax credit.-

(1) Every registered person shall, subject to such conditions and restrictions as may be prescribed, be entitled to avail the credit of eligible input tax, as self-assessed, in his return and such amount shall be credited to his electronic credit ledger.

(2) The credit of input tax availed by a registered person under sub-section (1) in respect of such supplies of goods or services or both, the tax payable whereon has not been paid by the supplier, shall be reversed along with applicable interest, by the said person in such manner as may be prescribed:

*Provided that where the said supplier makes payment of the tax payable in respect of the aforesaid supplies, the said registered person may re-avail the amount of credit reversed by him in such manner as may be prescribed.*

8. Though section 41 still provides that a registered person can do self-assessment of ITC in Form GSTR-3B but in light of the restrictions imposed in manner of doing compliances, it appears that self-assessment has to be done as per ITC appearing in Form GSTR-2B. The main reason behind this restriction is that **if a registered person avails ITC in excess of Form GSTR-2B by a prescribed limit, his GSTIN would be categorized as restricted, and all his customers won't be able to avail ITC [refer section 38(2) (b) (iv)].**

9. The amended provisions of Section 37 reads as under:

### Section 37-Furnishing details of outward supplies.-

(1) Every registered person, other than an input service distributor, a non-resident taxable person and a person paying tax under the provisions of section 10 or section 51 or section 52, shall furnish, electronically, <sup>5</sup>[subject to such conditions and restrictions and] in such form and manner as may be prescribed, the details of outward supplies of goods or services or both effected during a tax period on or before the tenth day of the month succeeding the said tax period and such details <sup>6</sup>[shall, subject to such conditions, and restrictions, within such time and in such manner as may be prescribed, be communicated to the recipient of the said supplies]:

~~Provided that the registered person shall not be allowed to furnish the details of outward supplies during the period from the eleventh day to the fifteenth day of the month succeeding the tax period:~~

.....

~~(2) Every registered person who has been communicated the details under sub-section (3) of section 38 or the details pertaining to inward supplies of input service distributor under sub-section (4) of section 38, shall either accept or reject the details so communicated, on or before~~

~~the seventeenth day, but not before the fifteenth day, of the month succeeding the tax period and the details furnished by him under sub-section (1) shall stand amended accordingly.~~

(3) Any registered person who has furnished the details under sub-section (1) for any tax period <sup>7</sup>[\*\*\*], shall, upon discovery of any error or omission therein, rectify such error or omission, in such manner as may be prescribed, and shall pay the tax and interest, if any, in case there is short payment of tax on account of such error or omission, in the return to be furnished for such tax period:

*Provided that no rectification of error or omission in respect of the details furnished under sub-section (1) shall be allowed after <sup>8</sup>[the thirtieth day of November] following the end of the financial year to which such details pertain, or furnishing of relevant annual return, whichever is earlier:*

.....

(4) <sup>9</sup>[A registered person shall not be allowed to furnish the details of outward supplies under sub-section (1) for a tax period, if the details of outward supplies for any of the previous tax periods has not been furnished by him:

*Provided that the Government may, on the recommendations of the Council, by notification, subject to such conditions and restrictions may be specified therein, allow a registered person or class of registered person to furnish the details of outward supplies under sub-section (1), even if he has not furnished the details of outward supplies for one or more previous tax periods.]*

### Paksh Remarks

10. In our view, as a result of amendment made in section 37:

(i) Statutory backing is given to Rule 59(6) of the CGST Rules i.e. statement in Form GSTR-1 cannot be furnished if GSTR-3B for the preceding tax period/ preceding month is not filed.

<sup>5</sup> Inserted by Finance Act, 2022 w.e.f. a date to be notified. Notified vide NN/18/2022-CT w.e.f. 01.10.2022

<sup>6</sup> Substituted for "shall be communicated to the recipient of the said supplies within such time and in such manner as may be prescribed" by Finance Act, 2022 w.e.f. date to be notified. Notified vide NN/18/2022-CT w.e.f. 01.10.2022.

<sup>7</sup> The word " and which have remained unmatched under section 42 and section 43" omitted by Finance Act, 2022 w.e.f. a date to be notified. Notified vide NN/18/2022-CT w.e.f. 01.10.2022.

<sup>8</sup> Substituted for the words "furnishing of the return under section 39 for the month September" by the Finance Act, 2022 w.e.f. a date to be notified. Notified vide NN/18/2022-CT w.e.f. 01.10.2022.

<sup>9</sup> Inserted by Finance Act, 2022 w.e.f. a date to be notified. Notified vide NN/18/2022-CT w.e.f. 01.10.2022.



## Update on Notification

- (ii) As Form GSTR-2B now communicates the matched results, subject to slight variation of one tax period for which the corresponding supplier do not furnish GSTR-3B, there was no requirement for section 37(2) which provided for communication of discrepancies between supplier and recipient. Hence, the same has been omitted.
- (iii) As Form GSTR-2B now communicates the matched results, subject to slight variation of one tax period for which corresponding supplier do not furnish GSTR-3B, there was no requirement for section 37(2) which provided for communication of discrepancies between supplier and recipient. Hence, the same has been omitted.
- (iv) As the manner of compliance has been made subject to various restrictions (restriction in filing of Form GSTR-1, GSTR-3B, blocking of e-way bills, e-invoice auto-population of data in GSTR-1 and GSTR-2A, suspension of registration in case of anomalies between GSTR-1 and GSTR-3B), and section 42 and 43 have been omitted, the reference thereof has been omitted from section 37(3).
- (v) Section 37(4) provides an additional restriction in filing of Form GSTR-1 i.e., GSTR-1 cannot be filed if the same is not filed for any of the previous tax periods.

### Concluding remarks

11. In view of the author, the government has effectively reduced the provisions of section 16(2) (c) to a dead letter in backdrop of various restrictions imposed on filing of Form GSTR-1, as stated above.
12. In pre-amended law, matching provisions triggers pursuant to filing of valid return (section 16(2)(c) read with section 41, 42 rule 69 to 72) and the registered persons were unconditionally entitled to do self-assessment for availing ITC. However, now role of online matching has been circumscribed to communication of matched results in Form GSTR-2B. Therefore, 'Section 16(2)(aa), 16(2)(ba), is a mirror image of former 'section 16(2)(c) read with section 41, 42'. Hence we still expect that bonafide recipients would not be made victim of non-compliance at the end of supplier and their input tax credit won't be held ineligible.
13. It is strongly advised to do self-assessment of ITC claims in returns filed for a relevant tax period as also upheld by the Hon'ble Supreme Court in the case of **Bharti Airtel (supra)**. However, in light of restrictions inserted vide section 38(2)(b)(iv), the manner of doing the same may be subject to judicial scrutiny.

### Revised Timelines for availing ITC, issuing Credit Notes and rectifying returns

The time limit for availing input tax credit, rectifying GSTR-1, GSTR-3B, GSTR-8 issuing credit notes have been extended vide Finance Act, 2022 which got notified w.e.f. 01.10.2022. The extensions are applicable for FY 2021-22 as well. A discussion thereon is made below for ease of reference.

#### A. Extension in time for availing ITC

Sub-section (4) of section 16 of the CGST Act is amended to provide for an extended time for Availment of input tax credit by registered person in respect of any invoice or debit note pertaining to a financial year upto thirtieth day of November of the following financial year. The bare text of amended law reads as under:

#### **"16. Eligibility and conditions for taking input tax credit**

*(4) A registered person shall not be entitled to take input tax credit in respect of any invoice or debit note for supply of goods or services or both after the thirtieth day of November following the end of financial year to which such invoice or debit note pertains or furnishing of relevant annual return, whichever is earlier.*

#### Paksh Remarks

1. This extension is applicable for FY 2021-22 as well.
2. Earlier the time limit to avail ITC was capped at "due date of furnishing the return under section 39 for the month September" which is 20<sup>th</sup> /22<sup>nd</sup> /24<sup>th</sup> of October. Since this amendment has taken effect from 01.10.2022, the due date for availing ITC for FY 2021-22 has also been extended to 30.11.2022.
3. There are two schools of thought on interpretation of section 16(4). As per one school, section 16(4) provides for date by when credit can be availed in electronic credit ledger. Whereas per another school, section 16(4) provides for the date by when credit can be taken in the books of account.
4. Going by second school of thought as well, this amendment is applicable for claims related to FY 2021-22 because right to avail ITC never became dead. A registered person was eligible to claim ITC for FY 2021-22 on 30.09.2022 as well as on 01.10.2022.
5. A press release has also been issued to clarify that ITC for FY 2021-22 can be claimed on or before 30.11.2022.

#### B. Extension in time for rectifying GSTR-1, return u/s 39 and GSTR-8

##### (i) Statement of outward supplies in Form GSTR-1

Form GSTR-1, the statement of outward supplies can be rectified on or before 30<sup>th</sup> day of November following the end of financial year to which such details pertain or furnishing of relevant annual return, whichever is earlier. The



## Update on Notification

bare text of amended law reads as under:

### Section 37- Furnishing details of outward supplies

(3) Any registered person, who has furnished the details under sub-section (1) for any tax period [\*\*\*], shall, upon discovery of any error or omission therein, rectify such error or omission in such manner as may be prescribed, and shall pay the tax and interest, if any, in case there is short payment of tax on account of such error or omission, in the return to be furnished for such tax period:

Provided that no rectification of error or omission in respect of the details furnished under sub-section (1) shall be allowed after the thirtieth day of November following the end of the financial year to which such details pertain, or furnishing of the relevant annual return, whichever is earlier:

#### Paksh Remarks

1. This extension is applicable for FY 2021-22 as well.
2. Since the role of online matching has been circumscribed to the communication of matched results in GSTR-2B, section 42, 43 and 43A have been omitted and accordingly, the expression "and which have remained unmatched under section 42 or section 43" have been omitted from section 37(3).

### (ii) Return u/s 39(1), 39(2), 39(3), 39(4) and 39(5)

Return can be rectified on or before 30<sup>th</sup> day of November following the end of financial year to which such details pertain or furnishing of relevant annual return, whichever is earlier. The bare text of amended law reads as under:

### Section 39- Furnishing of returns

(9)<sup>1</sup>[Where] any registered person after furnishing a return under sub-section (1) or sub-section (2) or sub-section (3) or sub-section (4) or sub-section (5) discovers any omission or incorrect particulars therein, other than as a result of scrutiny, audit, inspection, or enforcement activity by the tax authorities, he shall rectify such omission or incorrect particulars in the return to be furnished for the month or quarter during which such omission or incorrect particulars are noticed, subject to payment of interest under this Act: Provided that no such rectification of any omission or incorrect particulars shall be allowed after <sup>2</sup>[the thirtieth day of November] following the end of the financial year, or the actual date of furnishing of relevant annual return, whichever is earlier.

#### Paksh Remarks

1. This extension is applicable for FY 2021-22 as well.
2. Since the manner of compliance are not linked automatically with GSTR-1, the expression "subject to the provisions of section 37 and 38, "if" has been substituted to "where".

### (iii) Collection of tax at source

Form GSTR-8, the statement of TCS can be rectified on or before 30<sup>th</sup> day of November following the end of financial year to which such details pertain or furnishing of relevant annual return, whichever is earlier. The bare text of amended law reads as under:

**Section 52(6)** If any operator after furnishing a statement under sub-section (4) discovers any omission or incorrect particulars therein, other than as a result of scrutiny, audit, inspection or enforcement activity by the tax authorities, he shall rectify such omission or incorrect particulars in the statement to be furnished for the month during which such omission or incorrect particulars are noticed, subject to payment of interest, as specified in sub-section (1) of section 50:

Provided that no such rectification of any omission or incorrect particulars shall be allowed after the ~~due date for furnishing of statement for the month of September~~ thirtieth day of November following the end of the financial year or the actual date of furnishing of the relevant annual statement, whichever is earlier.

#### Paksh Remarks

Section 52 of the CGST Act is amended to provide for an extended time up to thirtieth day of November of the following financial year for rectification of errors in the statement. Said extension is applicable for FY 2021-22 as well.

### C. Extension in time limit for issuing credit notes

Credit notes can be declared in the returns on or before 30<sup>th</sup> day of November following the end of financial year in which such supply was made, or the date of furnishing of relevant annual return, whichever is earlier. The bare text of amended law reads as under:

### Section 34- Credit and Debit Notes

(2) Any registered person who issues a credit note in relation to a supply of goods or services or both shall declare the details of such credit note in the return for the month during which such credit note has been issued but not later than ~~September~~ thirtieth day of November following the end of the financial year in which supply was made, or the date of furnishing of the relevant annual return, whichever is earlier, and the tax liability shall be adjusted in such manner as may be prescribed: Provided that no reduction in output tax liability of the supplier shall be permitted, if the incidence of tax and interest on such supply has been passed on to any other person.

<sup>1</sup>Substituted for "Subject to the provisions of section 37 and 38, if" by the Finance Act, 2022, **w.e.f. a date to be notified**. Notified vide NN/18/2022-CT **w.e.f. 01.10.2022**.

<sup>2</sup> Substituted for "the due date for furnishing of return for the month September or second quarter" by the Finance Act, 2022, **w.e.f. a date to be notified**. Notified vide NN/18/2022-CT **w.e.f. 01.10.2022**.



# Update on Notification

## Clause 101 to the Finance Bill 2022

Clause 101 to the Finance Bill 2022 proposed amendment in this section with following object:

*"Clause 101 seek to amend sub-section (2) of section 34 of the Central Goods and Services Tax Act so as to provide for thirtieth day of November following the end of the financial year, or the date of furnishing of the relevant annual return, whichever is earlier, as the **last date for issuance of credit notes in respect of any supply made in a financial year.**"*

### Paksh Remarks

1. Statutory reading of this provision gives an indication to the contrary i.e. the credit note shall be declared in the return for the period during which such credit note has been issued but not later than 30<sup>th</sup> day of November. This has also been stated by the Government in a press release issued recently.
2. However, going by the language used in the clause 101 to the Finance Bill 2022, it appears that intention was to allow issuance of credit notes on or before thirtieth day of November following the end of the financial year, or the date of furnishing of relevant annual return, whichever is earlier. Therefore, there may be anomalies in ensuring compliance with this provision.

## Section 41- Availment of Input Tax Credit

As the Government circumscribed the role of online matching to the auto-population of matched results in Form GSTR-2B, the concept of provisional credit has been done away with. ITC self-assessed in return need not to be kept as provisional and made subject to matching after the filing of valid return.

In light of the restrictions imposed in filing of Form GSTR-1 viz., it cannot be filed if GSTR-1 or GSTR-3B for any of the previous tax period is not filed, and newly added conditions for entitlement to ITC vide section 16(2)(aa) and 16(2)(ba), the circumstance of availing ITC in respect of invoices whose tax is not paid by the corresponding supplier has effectively reduced to one tax period.

The pre-amendment law and amended law reads as under:

### Pre-amendment Law

#### "41. Claim of input tax credit and provisional acceptance thereof

- (1) Every registered person shall, subject to such conditions and restrictions as may be prescribed, be entitled to take the credit of eligible input tax, as self-assessed, in his return and such amount shall be credited on a provisional basis to his electronic credit ledger.
- (2) The credit referred to in sub-section (1) shall be utilized only for payment of self-assessed output tax as per the return referred to in the said sub-section."

### Amended Law

#### "41. Availment of input tax credit

- (1) Every registered person shall, subject to such conditions and restrictions as may be prescribed, be entitled to avail the credit of eligible input tax, as self-assessed, in his return and such amount shall be credited to his electronic credit ledger.
- (2) The credit of input tax availed by registered person under sub-section(1) in respect of such supplies of goods or services or both, the tax payable whereon has not been paid by supplier, shall be reversed along with applicable interest, by the said person in such manner as may be prescribed:

*Provided that where the said supplier makes payment of the tax payable in respect of the aforesaid supplies, the said registered person may re-avail the amount of credit reversed by him in such manner as may be prescribed."*

### Effect of Amendment

1. As stated above, there is no need for concept of provisional credit now.
2. In a situation where ITC appears in Form GSTR-2B but the tax in respect thereof has not been paid by the corresponding supplier, the recipient shall reverse the credit along with applicable interest. However, when the tax is paid by the taxpayer, recipient is entitled to re-avail the credit.



## Update on Notification

3. **There is no scope for self-assessment of ITC-** Considering the conditions to avail ITC u/s 16(2)(aa), 16(2)(ba) and restrictions imposed by section 38(2)(b)(iv)-if a registered person avails ITC in excess of amount appearing in Form GSTR-2B by a specified limit to be prescribed, ITC in respect of supplies made by him would be communicated as "not available" to all his recipients. Hence, practically the wisdom of registered person to make self-assessment has been curtailed and to this extent, the observations of Hon'ble Supreme Court in the case of **Bharti Airtel** have been conflicted with.
4. Earlier section 42(7) provided that recipient can re-avail the ITC (i.e., amount can be reduced from the output tax liability) if supplier pays the tax within the time limits provided under section 39(9) of the Act. However, said restriction is not specifically mentioned in proviso to section 41(2) but it cannot be concluded that it does not apply. A reading of conditions to avail ITC i.e., section 16(2)(aa) and 16(2)(ba) read with section 16(4) suggest that supplier must pay tax on or before 30<sup>th</sup> November of following financial year.

### Section 39- Furnishing of returns

Section 39(10) of the CGST Act, 2017 is amended so as to provide for furnishing of details of outward supplies of a tax period under sub-section (1) of section 37 as a condition for furnishing GSTR-3B return.

#### Pre-amendment Law

39(10) A registered person shall not be allowed to furnish a return for a tax period if the return for any of the previous tax periods has not been furnished by him.

#### Amended Law

39(10) A registered person shall not be allowed to furnish a return for a tax period if the return for any of the previous tax periods **or the details of outward supplies under sub-section (1) of section 37 for the said tax period has not been furnished by him:**

*Provided that the Government may, on the recommendations of the Council, by notification, subject to such conditions and restrictions as may be specified therein, allow a registered person or a class of registered persons to furnish the return, even if he has not furnished the returns for one or more previous tax periods or has not furnished the details of outward supplies under sub-section (1) of section 37 for the said tax period.*

#### Effect of Amendment

1. GSTR-3B for a tax period could not be file if taxpayer fails to file GSTR-1 for **SAME** tax period.
2. Through this amendment, the Government has become more stringent towards matching concept in GST.

### Section 29- Cancellation or suspension of registration

#### Pre-amendment Law

##### 29. Cancellation or suspension of registration:

29(2)The proper officer may cancel the registration of a person from such date, including any retrospective date, as he may deem fit, where,-

- a) .....
- b) a person paying tax under section 10 has not furnished returns for three consecutive tax periods; or
- c) any registered person, other than a person specified in clause (b), has not furnished returns for a continuous period of six months; or

#### Amended Law

##### 29. Cancellation or suspension of registration:

29(2) The proper officer may cancel the registration of a person from such date, including any retrospective date, as he may deem fit, where,-

- a).....
- b) a person paying tax under section 10 has not furnished the return for a financial year beyond three months from the due date of furnishing the said return; or
- c) any registered person, other than a person specified in clause(b), has not furnished returns for such continuous tax period as may be prescribed; or

"Such continuous tax period" has been prescribed in Rule 21. Registration to be cancelled in certain cases by way of NN/19/2022 dated 28<sup>th</sup> September 2022 as under:

- h) being a registered person required to file return under sub-section (1) of section 39 for each month or part thereof, has not furnished returns for a continuous period of six months;
- i) being a registered person required to file return under proviso to sub-section (1) of section 39 for each quarter or part thereof, has not furnished returns for a continuous period of two tax periods.;

#### Effect of Amendment

1. A Composition dealer is required to file the return for a financial year in Form GSTR-4 on or before 30<sup>th</sup> day of April. This return was earlier filed on quarterly basis. From FY 2019-20, it was made annual. [NN 21/2019-CT dated 23.04.2019 refers]. However, the clause related to cancellation of registration was not amended. Therefore the amendment is corrective in nature.
2. In all other cases, failure to furnish returns for a continuous period of six months attracted the cancellation or suspension of registration. This provision is now amended to provide that period is to be prescribed by way of rules. Accordingly, period of 'six continuous months' in case of monthly return filers and 'two continuous tax periods' in case of quarterly





## Update on Notification

return filers has been prescribed in Rule 21.

- The period has only been prescribed for GSTR-3B filers. For other return filers, the period is not yet prescribed.

### Section 54- Refund of tax

In the provision relating to refund, various corrective amendments have been made. The refund of balance lying in electronic cash ledger was being applied through Form GST RFD-01 and not through return. Accordingly, the same has been provided in the Act now. Likewise, refund can now be withheld in all cases instead of refund in cases of unutilized ITC. The relevant date for refund of unutilized ITC for supplies made to SEZ has been specified now.

#### Pre-amendment Law

(1) Any person claiming refund of any tax and interest, if any, paid on such tax or any other amount paid by him, may make an application before the expiry of two years from the relevant date in such form and manner as may be prescribed:

Provided that a registered person, claiming refund of any balance in the electronic cash ledger in accordance with the provisions of sub-section (6) of section 49, may claim such refund in ~~[such form and] [the return furnished under section 39 in such]~~ manner as may be prescribed.

(2) A specialized agency of the United Nations Organization or any Multilateral Financial Institution and organization notified under the United Nations (Privileges and Immunities) Act, 1947 (46 of 1947), Consulate or Embassy of foreign countries or any other person or class of persons, as notified under section 55, entitled to a refund of tax paid by it on inward supplies of goods or services or both, may make an application for such refund, in such form and manner as may be prescribed, before the expiry of ~~[two years]~~ ~~[six months]~~ from the last day of the quarter in which such supply was received.

(10) Where any refund is due ~~under sub-section (3)~~ to a registered person who has defaulted in furnishing any return or who is required to pay any tax, interest or penalty, which has not been stayed by any court, Tribunal or Appellate Authority by the specified date, the proper officer may-

- Withhold payment of refund due until the said person has furnished the return or paid the tax, interest or penalty, as case may be;
- Deduct from the refund due, any tax, interest, penalty, fee or any other amount which the taxable person is liable to pay but which remains unpaid under this Act or under the existing law.

Explanation – For the purposes of this sub-section, the

Expression “specified date” shall mean the last date for filing an appeal under this Act.

*(ba) in case of zero-rated supply of goods or services or both to a Special Economic Zone developer or a Special Economic Zone unit where a refund of tax paid is available in respect of such supplies themselves, or as the case may be, the inputs or input services used in such supplies, the due date for furnishing of return under section 39 in respect of such supplies;*

#### Effect of Amendment

- Refund of balance in electronic cash ledger is being filed in Form GST RFD-01 due to non-functioning of Form GSTR-3. Since Form GSTR-3 has been done away with, the enabling provision for applying refund through RFD-01 has been inserted.
- Now, the refund can be withheld even in cases where zero-rated supplies are made with payment of tax or in other cases as well. This is a corrective amendment.
- Corresponding amendments have also been carried out in Rule 89 and Rule 96 of the CGST Rules, 2017.
- As per Section 54(2) of the GST Act, the application for refund is to be made within a period of 6 months from the end of quarter in which inward supplies are received. However, the government, as a special procedure notified under Section 148, have extended this time limit to 18 months.
- The relevant date for claiming refund in case of SEZ supplies has been provided now. Prior to amendment vide CGST (Amendment) Act, 2018, w.e.f. 01.02.2019, the end of financial year was considered as the relevant date. During the period between 01.02.2019 to 30.09.2022, there was no relevant date prescribed for claiming refund of unutilized ITC for supplies made to SEZ without payment of Integrated Tax.

### Rule-37 Reversal of Input Tax credit in the case of non-payment of consideration

As per CGST Act, 2017, ITC charged on any inward supply of goods or services or both can be availed by the taxpayers subject to conditions prescribed in Section 16(2) of the Act. Further, according to the second proviso to sub-section (2) of Section 16, one of the condition for availing ITC is that the buyer must have paid the value of supply along with the tax payable to the supplier within a period of 180 days from the date of issue of invoice by supplier. CBIC has amended the Rule 37 vide Notification No. 19/2022-CT dated 28.09.2022 whereby sub-rule (1) and (2) have been substituted and sub-rule (3) has been omitted.



## Update on Notification

### Pre-amendment Law

- (1) A registered person, who has availed of input tax credit on any inward supply of goods or services or both, but fails to pay to the supplier thereof, the value of such supply along with the tax payable thereon, within the time limit specified in the second proviso to subsection(2) of section 16, shall furnish the details of such supply, the amount of value not paid and the amount of input tax credit availed of proportionate to such amount not paid to the supplier in FORM GSTR-2 for the month immediately following the period of one hundred and eighty days from the date of the issue of the invoice:

Provided that the value of supplies made without consideration as specified in Schedule I of the said Act shall be deemed to have been paid for the purposes of the second proviso to sub-section (2) of section 16:

[Provided further that the value of supplies on account of any amount added in accordance with the provisions of clause (b) of sub-section (2) of section 15 shall be deemed to have been paid for the purposes of the second proviso to sub-section (2) of section 16.]

- (2) The amount of input tax credit referred to in sub-rule (1) shall be added to the output tax liability of the registered person for the month in which the details are furnished.
- (3) The registered person shall be liable to pay interest at the rate notified under sub-section (1) of section 50 for the period starting from the date of availing credit on such supplies till the date when the amount added to the output tax liability, as mentioned in sub-rule(2), is paid.
- (4) The time limit specified in sub-section (4) of section 16 shall not apply to a claim for re-availing of any credit, in accordance with the provisions of the Act or the provisions of this Chapter that had been reversed earlier.

### Amended Law

- (1) [A registered person, who has availed of input tax credit on any inward supply of goods or services or both, other than the supplies on which tax is payable on reverse charge basis, but fails to pay to the supplier thereof, the amount towards the value of such supply along with the tax payable thereon, within the time limit specified in the second proviso to sub-section (2) of section 16, shall pay an amount equal to the input tax credit availed in respect of such supply along with interest payable thereon under section 50, while furnishing the return in FORM GSTR-3B for the tax period immediately following the period of one hundred and eighty days from the date of the issue of the invoice:

Provided that the value of supplies made without consideration as specified in Schedule I of the said Act shall be deemed to have been paid for the purposes of the second proviso to sub-section (2) of section 16:

Provided further that the value of supplies on account of any amount added in accordance with the provisions of clause (b) of sub-section (2) of section 15 shall be deemed to have been paid for the purposes of the second proviso

to sub-section (2) of section 16.

- (2) Where the said registered person subsequently makes the payment of the amount towards the value of such supply along with tax payable thereon to the supplier thereof, he shall be entitled to re-avail the input tax credit referred to in sub-rule (1).]
- ~~(3) The registered person shall be liable to pay interest at the rate notified under sub-section (1) of section 50 for the period starting from the date of availing credit on such supplies till the date when the amount added to the output tax liability, as mentioned in sub-rule(2), is paid.~~
- (4) The time limit specified in sub-section (4) of section 16 shall not apply to a claim for re-availing of any credit, in accordance with the provisions of the Act or the provisions of this chapter that had been reversed earlier.

### Effect of Amendment

1. As per pre-amendment provision, taxpayer is liable to reverse the proportionate ITC attributable to the portion of the value, which has not paid within 180 days. However, amended Rule 37(1) is silent about whether the taxpayer is liable to reverse the entire or proportionate ITC, in cases where only part of the invoice value is paid within 180 days.
2. As per pre-amendment provision, interest was payable by the taxpayer as per the rate notified under section 50(1) of the CGST Act whereas now only reference to section 50 has been mentioned which on one hand has removed ambiguity between applicability of section 50 as well as rule 37 but has invited fresh thoughts on applicability of section 50(1) or 50(3) on said reversal.
3. The main reason behind such ambiguity is benefit of paying interest only to the extent of ITC utilized u.s 50(3).
4. In our view, the expression "output tax liability" used in proviso to section 16(2) is a result of original scheme of GST law wherein effects to said reversals were given in Form GSTR-3 under a separate table by way of adding to the output tax liability. It has no other effect. In the amended regime, this reversal is necessarily a ITC reversal.



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