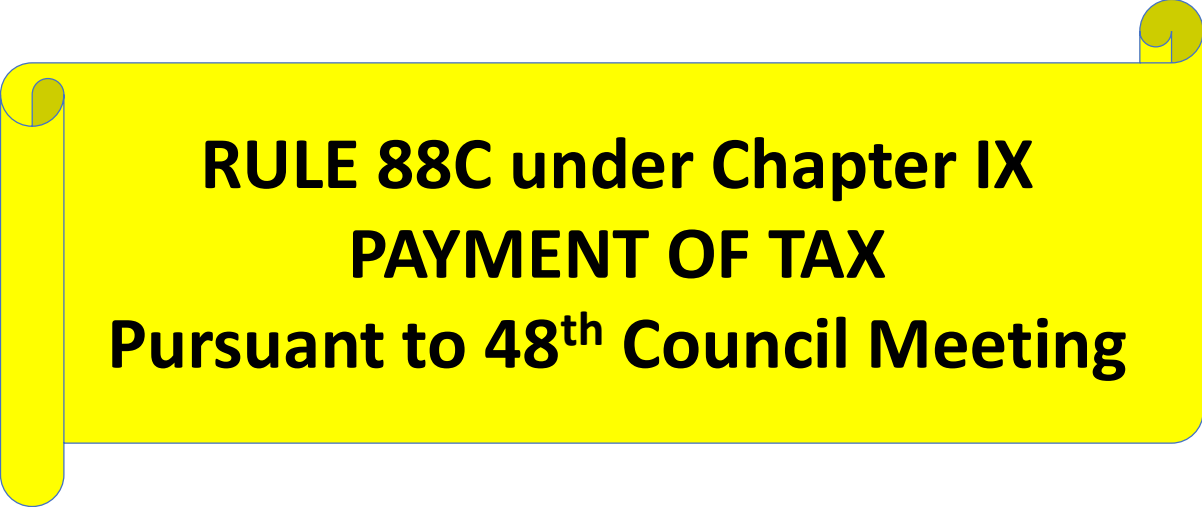




VIBRANT CURVES & MOVES OF GST

BY:
CA AANCHAL KAPOOR
M. NO. 9988692699,9888069269



A yellow scroll graphic with a black outline and rounded corners. The scroll is unrolled in the center, with the top and bottom edges curling upwards. The text is centered on the unrolled portion.

**RULE 88C under Chapter IX
PAYMENT OF TAX
Pursuant to 48th Council Meeting**



Notification 26/2022 dated 26-12-2022

Tax in
GSTR-1
>
GSTR-3B

➤ RULE 88C

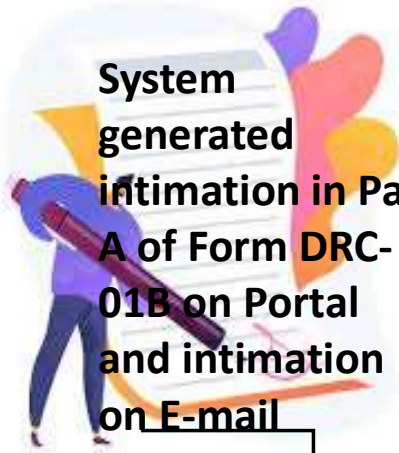
“88C. Manner of dealing with difference in liability reported in statement of outward supplies and that reported in return i.e. difference in GSTR-1 & GSTR-3B.

To put an end to the uncertainties prevailing in the trade due to absence of any requirement to issue any notice/intimation under the law u/s 75(12) by the department before initiating direct recovery, Rule 88C has been inserted in the CGST Rules. This rule basically provides for as under:

1. Where tax payable for a tax period under GSTR-1 exceeds the amount of tax payable under GSTR-3B, by specified amount and percentage, a system generated intimation in Part A of Form DRC-01B of such difference shall be given to registered person.
2. On receipt of DRC-01B, registered person shall **within a period of 7 days** either pay such differential tax liability fully or partially with interest and furnish details thereof and furnish the same in Part B of Form DRC-01B electronically on the common portal, or
3. Furnish a reply electronically on common portal incorporating reasons in respect of unpaid differential liability, if any, **in Part B of Form DRC-01B.**
4. In case, differential tax liability is not paid within period specified, or where no explanation or reason is furnished by registered person or where such reason is not found to be acceptable by proper officer, **the said amount shall be recoverable in accordance with Section 79 of the CGST Act.**

**Tax in GSTR-1 > GSTR-3B
by Specified %age**

System generated intimation in Part A of Form DRC-01B on Portal and intimation on E-mail



PAY & Furnish the same in Part B of Form DRC-01B on Common Portal

Not PAid

Within 7 days

Furnish a **Reply** electronically on common portal in Part B of Form DRC-01B

Reply Not acceptable by PO

RECOVERY PROCEEDINGS AS PER SECTION 79



Notification 26/2022

As an outcome of the recent 48th GST council meeting, the manner of dealing with difference in liability reported in statement of outward supplies (GSTR-1) and that reported in return (GSTR-3B) has been codified in the form of Rule 88C of the CGST Rules. This rule is likely to affect the taxpayers in case of any discrepancies between the supplies reported in GSTR-1 and GSTR-3B. The onus will be on the taxpayers to ensure compliance.

➤ The First Question that arises

The first question that arises in mind is whether this rule has got a statutory backing? The answer to this question apparently seems to be a yes. **Section 75(12) of the CGST Act provides for direct recovery of unpaid or short-paid self-assessed tax as per GSTR-3B without following the demand procedures laid down under the CGST Act.** The Finance Act, 2021 has amended this section by inserting an explanation to provide that the expression “self-assessed tax” shall include the tax payable in respect of details of outward supplies furnished in form GSTR-1, but not included in the return furnished in form GSTR-3B. This explanation extended statutory power to department for direct recovery of tax in a situation of difference between the output liability reported in GSTR-1 and actual tax discharged in GSTR-3B for the relevant period. However, the provision was silent on grant of any opportunity of being heard before initiating recovery proceedings which was later clarified vide a benevolent circular.

**RULE
59**

Rule 59 has also been amended to provide that in case where intimation is received by registered person under Rule 88C, such person shall not be allowed to furnish GSTR-1 for a subsequent tax period, unless he has either deposited the amount specified in intimation or has furnished a reply explaining the reasons for any amount remaining unpaid. It was stated in the 48th GST council meeting that this would facilitate taxpayers to pay/ explain the reason for the difference in such liabilities reported by them, without intervention of the tax officers. Here, it would be interesting to see whether any reply by the taxpayer explaining the differences would suffice or such reply will have to be to the satisfaction of the officer.

- ❖ The newly inserted rule has made the GSTR-1 and GSTR-3B reconciliation an indispensable time-sensitive exercise wherein a limited window of 7 days has been provided to reconcile the difference and take a call either to pay or to explain the differences.

**RULE
138**

Further, the newly inserted rule does not provide for any sort of extension of the strict time limit of 7 days. The inaction would not just trigger the direct recovery action by the department but also block filing of GSTR-1 for the subsequent periods. Since there is mandate of sequel filing of GSTR-1 and GSTR-3B under Section 39, effectively, GSTR-3B can also not be filed for subsequent periods unless this difference is sorted. In case, default in filing GSTR-1 or GSTR-3B continues for one more tax-period, filing of **E-way bill will also be restricted under Rule 138E** rendering the businesses completely helpless for movement of any goods under the cover of E-way bill and thereby, disrupting the entire business chain.

➤ The nature of the intimation in the form of DRC-1B is not clear as to whether it is a notice for demand under Section 75. If so, rigours of that section should be made applicable to this intimation as well which would include opportunity of being heard, grant of time/adjournments and requirement of passing speaking order by the proper officer whereas Rule 88C does not provide for any of these. In case the reasons furnished by the registered person are not acceptable to proper officer, the rule provides that the differential amount shall be recoverable in accordance with Section 79 of the CGST Act. It may also be possible that explanation furnished by registered person for few of the items is acceptable whereas for other items, it is not acceptable to proper office which would require determination and passing of order by the proper officer for the amount payable by the registered person. However, from the perusal of Rule 88C or the form DRC-1B, it appears that the proper officer would directly initiate recovery proceedings without passing any order. If so, where is the scope of challenging the order of proper officer regarding differential tax liability before appellate forums. This poses a serious question whether the only remedy with the registered person would be to rush to High Courts for stay of recovery action.



Rule should not be implemented till Negative Figures not allowed in GSTR 3B in Output Liability

- ***The newly inserted Rule 88C is not yet effective since the amount/percentage of differences must be specified to bring it in force. Nevertheless, this rule is set to result in flood of system generated DRC-1B thrown on taxpayers in the coming months. Therefore, it is paramount that the department clarifies these issues at the earliest to avoid unnecessary litigation in the times to come.***



INTRODUCED SEQUENTIAL FILING OF RETURNS (GSTR 1 & 3B)
NO subsequent Period can be furnished if previous not filled

Sec 39(10) File GSTR 1 then GSTR 3B can be filed by FA 2022 w.e.f 01-10-2022

Rule 59(6) Pay Taxes otherwise GSTR 1 cannot be filed (if 88C intimation issued)

Rule 21 if no consecutive filling for 6 months/2 Tax periods in quarterly Number Cancelled.

3years from due date -Maximum Time Limit prescribed for GSTR3B, GSTR 1,GSTR 9 (Budget 2023 proposal)

TAX in GSTR 1 > TAX in GSTR 3B -----GSTR 1 Tax will be Self Assessment Tax , Number can be cancelled as per Rule 21 and can be suspended as per RULE 21A



Consequence of non-compliance of Rule 88C

In the case where the **Amount specified in DRC-01B remains unpaid**, or no reply was furnished, or where the reply furnished was found to be unacceptable by the proper officer, recovery proceedings would be initiated by provisions of Section 79 of the CGST Act, 2017.

Sections	Relevant Rule
<p>79.⁴(1) Where any amount payable by a person to the Government under any of the provisions of this Act or the rules made thereunder is not paid, the proper officer shall proceed to recover the amount by one or more of the following modes, namely:—</p> <p>(a) the proper officer may deduct or may require any other specified officer to deduct the amount so payable from any money owing to such person which may be under the control of the proper officer or such other specified officer</p> <p>(b) the proper officer may recover or may require any other specified officer to recover the amount so payable by detaining and selling any goods belonging to such person which are under the control of the proper officer or such other specified officer;</p> <p>(c).....</p> <p>(d).....</p> <p>(e).....</p> <p>(f).....</p> <p>2) Where the terms of any bond or other instrument executed under this Act or any rules or regulations made thereunder provide that any amount due under such instrument may be recovered in the manner laid down in sub-section (1), the amount may, without prejudice to any other mode of recovery, be recovered in accordance with the provisions of that sub-section</p>	<p>Rule 143 of the CGST rules, 2017 Recovery by deduction from any money owed.</p> <p>Rule 144 of the CGST rules, 2017 Recovery by sale of goods under the control of proper officer.</p> <p>Rule 145 of the CGST rules, 2017 Recovery from a third person</p> <p>Rule 147 of the CGST rules, 2017 Recovery by sale of movable or immovable property.</p> <p>Rule 155 of the CGST rules, 2017 Recovery through land revenue authority</p> <p>Rule 156 of the CGST rules, 2017 Recovery through court</p> <p>Rule 157 of the CGST rules, 2017 Recovery from surety</p>

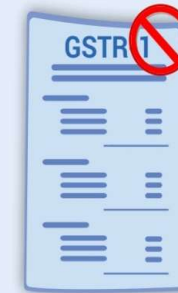
Section - 79, Central Goods And Services Tax Act, 2017

- (c) (i) the proper officer may, by a notice in writing, require any other person from whom money is due or may become due to such person or who holds or may subsequently hold money for or on account of such person, to pay to the Government either forthwith upon the money becoming due or being held, or within the time specified in the notice not being before the money becomes due or is held, so much of the money as is sufficient to pay the amount due from such person or the whole of the money when it is equal to or less than that amount;
- (ii) every person to whom the notice is issued under sub-clause (i) shall be bound to comply with such notice, and in particular, where any such notice is issued to a post office, banking company or an insurer, it shall not be necessary to produce any pass book, deposit receipt, policy or any other document for the purpose of any entry, endorsement or the like being made before payment is made, notwithstanding any rule, practice or requirement to the contrary;
- (iii) in case the person to whom a notice under sub-clause (i) has been issued, fails to make the payment in pursuance thereof to the Government, he shall be deemed to be a defaulter in respect of the amount specified in the notice and all the consequences of this Act or the rules made thereunder shall follow;
- (iv) the officer issuing a notice under sub-clause (i) may, at any time, amend or revoke such notice or extend the time for making any payment in pursuance of the notice;
- (v) any person making any payment in compliance with a notice issued under sub-clause (i) shall be deemed to have made the payment under the authority of the person in default and such payment being credited to the Government shall be deemed to constitute a good and sufficient discharge of the liability of such person to the person in default to the extent of the amount specified in the receipt;
- (vi) any person discharging any liability to the person in default after service on him of the notice issued under sub-clause (i) shall be personally liable to the Government to the extent of the liability discharged or to the extent of the liability of the person in default for tax, interest and penalty, whichever is less;
- (vii) where a person on whom a notice is served under sub-clause (i) proves to the satisfaction of the officer issuing the notice that the money demanded or any part thereof was not due to the person in default or that he did not hold any money for or on account of the person in default, at the time the notice was served on him, nor is the money demanded or any part thereof, likely to become due to the said person or be held for or on account of such person, nothing contained in this section shall be deemed to require the person on whom the notice has been served to pay to the Government any such money or part thereof;
- (d) the proper officer may, in accordance with the rules to be made in this behalf, distrain any movable or immovable property belonging to or under the control of such person, and detain the same until the amount payable is paid; and in case, any part of the said amount payable or of the cost of the distress or keeping of the property, remains unpaid for a period of thirty days next after any such distress, may cause the said property to be sold and with the proceeds of such sale, may satisfy the amount payable and the costs including cost of sale remaining unpaid and shall render the surplus amount, if any, to such person;
- (e) the proper officer may prepare a certificate signed by him specifying the amount due from such person and send it to the Collector of the district in which such person owns any property or resides or carries on his business or to any officer authorised by the Government and the said Collector or the said officer, on receipt of such certificate, shall proceed to recover from such person the amount specified thereunder as if it were an arrear of land revenue;
- (f) notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974), the proper officer may file an application to the appropriate Magistrate and such Magistrate shall proceed to recover from such person the amount specified thereunder as if it were a fine imposed by him.
- (2) Where the terms of any bond or other instrument executed under this Act or any rules or regulations made thereunder provide that any amount due under such instrument may be recovered in the manner laid down in sub-section (1), the amount may, without prejudice to any other mode of recovery, be recovered in accordance with the provisions of that sub-section.
- (3) Where any amount of tax, interest or penalty is payable by a person to the Government under any of the provisions of this Act or the rules made there-under and which remains unpaid, the proper officer of State tax or Union territory tax, during the course of recovery of said tax arrears, may recover the amount from the said person as if it were an arrear of State tax or Union territory tax and credit the amount so recovered to the account of the Government.
- (4) Where the amount recovered under sub-section (3) is less than the amount due to the Central Government and State Government, the amount to be credited to the account of the respective Governments shall be in proportion to the amount due to each such Government.

⁵³[Explanation.—For the purposes of this section, the word person shall include "distinct persons" as referred to in sub-section (4) or, as the case may be, sub-section (5) of [section 25](#).]

Sections	Relevant Rule
<p>(3) Where any amount of tax, interest or penalty is payable by a person to the Government under any of the provisions of this Act or the rules made there-under and which remains unpaid, the proper officer of State tax or Union territory tax, during the course of recovery of said tax arrears, may recover the amount from the said person as if it were an arrear of State tax or Union territory tax and credit the amount so recovered to the account of the Government</p> <p>(4) Where the amount recovered under sub-section (3) is less than the amount due to the Central Government and State Government, the amount to be credited to the account of the respective Governments shall be in proportion to the amount due to each such Government.</p> <p>¹² [Explanation.—For the purposes of this section, the word person shall include "distinct persons" as referred to in sub-section (4) or, as the case may be, sub-section (5) of section 25.]</p>	<p>The term "amount payable by a person" is to mean that such liability arises only after determination of such amount in a manner known to law.</p> <ul style="list-style-type: none"> • Liability self-assessed in Form GSTR-1 but not paid in Form GSTR-3B. Recovery action initiated by way of writing letters to tenants is justifiable. [Kabeer Reality Private Limited Versus UoI, HC – Madhya Pradesh (2019), WP No. 15645/2019 dated 21.11.2019] • It is for revenue to determine the tax liability by resorting to the procedures in accordance with law, instead of issuing the impugned proceedings straightaway under Section 79 based on the so called admission which is subsequently retracted. [M/S. V.N. Mehta & Company Versus The Assistant Commissioner, HC-Madras (2019) W.P. No. 26187 of 2019 dated 08.11.2019]

Blockage of further filing of GSTR-1



Rule 59(6)

Rule 59(6) of the CGST Act, 2017 also got inserted vide [GST Notification No. 26/2022](#) -Central Tax dated 26th December 2022. The rule **does not allow the filing of GSTR-1/IFF** for a subsequent tax period where after the issuance of DRC-01B the taxpayer fails to take any action.

The rule does not prescribe blocking of GSTR-1 / IFF where the reply furnished was found to be non-satisfactory by the tax authorities. Where the reply was furnished but found to be not satisfactory, only recovery proceedings under Section 79 of the CGST Act, 2017 would be triggered.

Where no action was taken against the issuance of DRC-01B, there would be blocking of GSTR-1/IFF along with initiation of recovery proceedings under Section 79 of the CGST Act, 2017.

OPPORTUNITY OF BEING HEARD

Where the response submitted by the taxpayer is found to be not satisfactory, **direct recovery proceedings under Section 79 of the CGST Act, 2017** would be initiated against the taxpayer without any further opportunity of being heard.

Section 75(4) warrants that an opportunity would be required where a request is received in writing or where any adverse decision is contemplated against such person. Raising of any demand / recovery on account of mismatch between GSTR-1 and 3B clearly gets classified here

In a case where the taxpayer disputes the liability computed on account of any reason, it is pertinent that he should be provided with a personal hearing before any adverse action is taken on him.

Reason For The Mismatch in GSTR-3B And GSTR 1

Misallocation:

GSTR-1 is prepared at the invoice level and GSTR-3B is prepared at the aggregate level. This can lead to furnishing supplies under the wrong head in GSTR-3B, but declaring the same details correctly in GSTR-1.

Negative Sales

Credit note being more than sales made during the period for earlier period adjusted subsequently. GSTR 3B=0, GSTR 1 with liability of current month.

Errors

Errors in filling GSTR 1 or GSTR 3B.

**Tax not paid in GSTR
3B on supplies :**

There have been multiple instances of ITC being passed on by the supplier vide GST-R1 for which tax have not been discharged through GSTR 3B.

**Post-filing
Amendments**



Amendment in supplies made after GSTR-1 filed.

Vide the recommendations of the [48th GST Council Meeting](#) on 17th December 2022, Rule 88C was inserted to provide for a mechanism for dealing with the difference arising from taxpayer's liability as reported in GSTR-1 v/s GSTR-3B.

Why Rule 88C is a Draconian Procedure?

1. There is No Enabling Section For Rule 88C

2. It is still not clarified whether DRC-01B is a Notice or not

3. If DRC-01B is a notice, then all the rights, remedies, and safeguards allowed in Section 75 must be available.

4. It is still not clarified whether an order will be issued by the Proper Officer to initiate recovery actions or not

5. Will the order be a Speaking Order or not?

What is Revenue's Stand For Rule 88C ?



- The department may take a stand that Rule 88C draws power from the explanation to section 75(12) which is inserted from 01.01.2022.
- If the taxpayer has admitted the Liability by filling GSTR-1 (self-assessment), then as per explanation to section 75(12), recovery action u/s 79 is justified .
- The taxpayer are given 7 days time to furnish a reply, which might qualify as an opportunity of being heard.

What is Revenue's Stand For Rule 88C unacceptable?

- Section 75(12) is a guidance for action under chapter XV but 88C is not a demand & recovery action. Hence, no enabling for this Rule.
- When the taxpayer furnishes a reply to DRC-01B, then the liability is disputed and this no more remains “ **Self- Assessed** ” . Then the law is set in motion and the adjudication is to be done as per the provision of the law.
- The taxpayers have to be awarded enough time to present and justify the difference . 7 days time cannot be regarded as enough opportunity to be heard .
- By Pass of entire Assessment and Demand Recovery Proceeding Mechanism of Section 73/74.

Sec. 75(12) General provisions relating to determination of tax.

12) Notwithstanding anything contained in section 73 or section 74, where any amount of self-assessed tax in accordance with a return furnished under section 39 remains unpaid, either wholly or partly, or any amount of interest payable on such tax remains unpaid, the same shall be recovered under the provisions of section 79.

[2020] 116 taxmann.com 205 (Karnataka) Union of India v. LC Infra Projects (P.) Ltd.

Competent Authority without issuing show cause notice as contemplated under section 73 determined interest payable under section 50 and attached bank account of assessee

- Whether issuance of show cause notice is sine qua non to proceed with recovery of interest payable in accordance with sub-section (1) of section 50 –
 - Held, yes –
- Whether therefore, interest levied upon assessee without issuing show cause notice was in breach of principles of natural justice and deserved to be set aside –
 - Held, yes

Without issuing SCN ---
the Notion is
Misconceived

No SCN required u/s
75(12) but Interest
Liability generated u/s
50(1) by Deptt is not Self
Assessed

[2020] 116 taxmann.com 262 (Jharkhand) Mahadeo Construction Co. v. Union of India*

Facts of the case



Assessee
(Partnership Firm)

filed its monthly return for month of February, 2018 and March, 2018



directed petitioner to make payment of interest on ground of delay in filing of GSTR-3B return for said months



Revenue
Authorities

Revenue further exercised powers under section 79 by initiating garnishee proceedings for recovery of said amount of interest by issuing notice to assessee's Banker

Held

- Whether since petitioner disputed computation or very levability of said interest, liability of said interest was required to be adjudicated by initiation of adjudication proceedings under section 73 or 74 –
 - Held, yes –
- Whether, therefore, without initiation of any adjudication proceedings, no recovery proceeding under section 79 could be initiated for recovery of interest amount –
 - Held, yes

Sec. 73(11) Determination of tax not paid or short paid or erroneously refunded or input tax credit wrongly availed or utilised for any reason other than fraud or any wilful-misstatement or suppression of facts.

Notwithstanding anything contained in sub-section (6) or sub-section (8), penalty under sub-section (9) shall be payable where any amount of self-assessed tax or any amount collected as tax has not been paid within a period of thirty days from the due date of payment of such tax.

Circular 76/50/2018
provided Relief

Amendment of section 75.

8 General provisions relating to determination of tax.

Explanation inserted:-

‘Explanation.—For the purposes of this sub-section, the expression "self-assessed tax" shall include the tax payable in respect of details of outward supplies furnished under section 37, but not included in the return furnished under section 39.’

Analysis

- This proposed amendment **widens the scope of self assessed tax** by including tax payable in respect of output supplies in GSTR 1 but not included in GSTR 3B.
- In cases where the liability in **GSTR-1 exceeds that from GSTR-3B, the same would be construed as “Self Assessed Tax”**
- Such short payment may give rise to invocation of **recoveries u/s 79** by virtue of sec. 75(12) and even attachment of **bank accounts through amended provision of Sec. 83.**
- In case of mismatch between GSTR 1 and 3B, **SCN need not to be issued and Opportunity of being heard need not to be provided.** (Although one may rely upon the judgment of LC infra [2020] 116 taxmann.com 205 (Karnataka) and Mahadeo Construction Co. [2020] 116 taxmann.com 262.)
- This will **curb the malpractices whereby liability was shown more in GSTR 1 rather than GSTR-3B, to avoid tax payments.**

ITC SONNET

FROM COMPLIANCE TO LITIGATION

**CONTROVERSIAL ISSUES INPUT
TAX CREDIT**

*“In view of the above, it has become necessary to have a **Central legislation**, namely the Central Goods and Services Tax Bill, 2017. The proposed legislation will confer power upon the Central Government for levying goods and services tax on the supply of goods or services or both which takes place within a State. The proposed legislation will **simplify and harmonise the indirect tax regime** in the country. It is expected to reduce cost of production and inflation in the economy, thereby making the Indian trade and industry more competitive, domestically as well as internationally. Due to the **seamless transfer of input tax credit from one stage to another in the chain of value addition, there is an in-built mechanism in the design of goods and services tax that would incentivise tax compliance by taxpayers.** The proposed goods and services tax will **broaden the tax base**, and result in better tax compliance due to a robust information technology infrastructure.”*

(Emphasis Supplied)

Does the above lines seem to be familiar with?



Yes, the same are none other than the part of **“STATEMENT OF OBJECTS AND REASONS”** of THE CENTRAL GOODS AND SERVICES TAX BILL, 2017, which seems to lose its relevance in light of unreasonable arbitrary restrictions and coercive provisions under GST.

“Input Tax Credit”, the basis for bringing up India’s biggest Indirect Tax Reform to eliminate cascading effect of taxes and promote Seamless Credit, has become a **Rigmarole in light of multiple hurdles** in form of

Litmus test of
Section 16

Section
16(4)time limits

Mischievous
Rule 36(4)



Mysterious
GSTR 2A/2B

Blocking of
credit as per
Section 17(5)

Rule
86A(Blockage
of Credit)

Circular 183

Rule 86B(1%
Cash payment),

Reversals owing
to 180 days
condition

Reversals
pertaining to
Rule 42/43

ITC
restrictions
through Rate
Notifications

Broken limbs in
form of GSTR 2
in absentia

GSTR3B as
proxy to GSTR 3

•break the free flow of Credit in the Tax Chain and Input Tax Credit seems to be lost ball in the weeds.



Circular No.183/15/2022

Clarification to deal with difference in Input Tax Credit (ITC) availed in FORM GSTR-3B as compared to that detailed in FORM GSTR-2A for FY 2017-18 and 2018-19-reg.

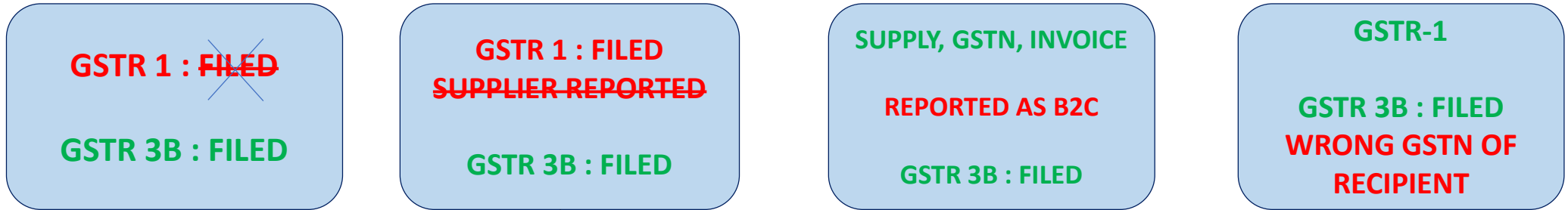
Section 16 of the Central Goods & Services Tax Act, 2017.



Provides for eligibility and conditions for availing Input Tax Credit (ITC).



**GST CIRCULAR
NO. 183/15/2022**



In all 4 cases Tax have been paid



PARA-4

LIMIT PER SUPPLIER PER YEAR

<= 5 LAKHS
CERTIFICATE FROM CONCERNED SUPPLIER

> 5 LAKHS
CERTIFICATE FROM CA or CMA
(Certificate issued shall contain UDIN)

ITC BY THE WRONG RECIPIENT SHOULD HAVE NOT BEEN TAKEN
(TO BE CHECKED BY CONCERNED JURISDICTIONAL OFFICER AS AN INDEPENDENT ACTION)

For the period F.Y. 2017-18 the said relaxation shall not be applicable to the claim of ITC made in the FORM GSTR-3B return filed after the due date of furnishing return for the month of September, 2018 till the due date of furnishing return for March, 2019



Who will give Certificate SUPPLIER BECOMES NON EXISTENT ?

WHAT ABOUT OTHER YEARS (OTHER THAN 2017-18 & 2018-19)

ITC of Recipient depends on SUPPLIER'S COMPLIANCE LEVEL

WIPRO LIMITED INDIA VS. THE ASSISTANT COMMISSIONER OF CENTRAL TAXES BENGALURU dated 6th DAY OF JANUARY, 2023 HIGH COURT OF KARNATAKA, BENGALURU WRIT PETITION No.16175 OF 2022(T-RES)

Under these circumstances, I am of the considered opinion that it would be just and proper to dispose of this petition directing the respondents 1 to 3 – revenue to follow the procedure prescribed in the Circular and apply the said Circular to the facts of the instant case of the petitioner, 5th respondent and **their transactions for the years 2017-18, 2018-19 and 2019-20**. It is also necessary to state that though the Circular refers only to the years 2017-18 and 2018-19, since there are identical errors committed by the petitioner not only in respect of the assessment years 2017-18 and 2018-19 but also in relation to the assessment year 2019-20 also, I am of the view that by adopting a justice oriented approach, the petitioner would be entitled to the benefit of the Circular for the year 2019-20 also.

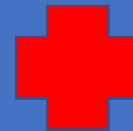


Notification 26/2022 dated 26-12-2022

➤ RULE 37A

REVERSAL OF INPUT TAX CREDIT IN THE CASE OF NON PAYMENT OF TAX BY THE SUPPLIER AND REAVAILMENT THEREOF

SITUATION : ITC of Invoice/Debit Note Claimed
in GSTR 3B by Recipient



Furnished in GSTR 1/IFF
by Supplier (i.e Appearing
in GSTR 2B of Recipient)

Provided That

Outward Supplies
In form 3B
~~Not furnished by~~
Supplier
On or before 30th day
of September of
following year

**REVERSE ITC in GSTR
3B on or before
30/11/of following
year**

ITC not reversed
In
Form 3B
AMOUNT + INTEREST

If return 3B
Subsequently furnished by
Supplier
**Credit may be re-availed
In FORM 3B**

Amendment in
Section 16

Eligibility and Conditions for taking
Input Tax Credit

2021 Budgetary
Amendment
(Effective date
01.01.2022)

Section 16

(1).....

(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 a tax invoice or debit note issued by a supplier registered under this Act, or such other tax paying documents as may be prescribed;

(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;”.

Notification No. 40/2021 – Central Tax

New Delhi, the 29th December, 2021

G.S.R...(E).- In exercise of the powers conferred by section 164 of the Central Goods and Services Tax Act, 2017 (12 of 2017), the Central Government, on the recommendations of the Council, hereby makes the following rules further to amend the Central Goods and Services Tax Rules, 2017, namely: —

1. Short title and commencement. -(1) These rules may be called the Central Goods and Services Tax (Tenth Amendment) Rules, 2021.

(2) Save as otherwise provided in these rules, they shall come into force on the date of their publication in the Official Gazette.

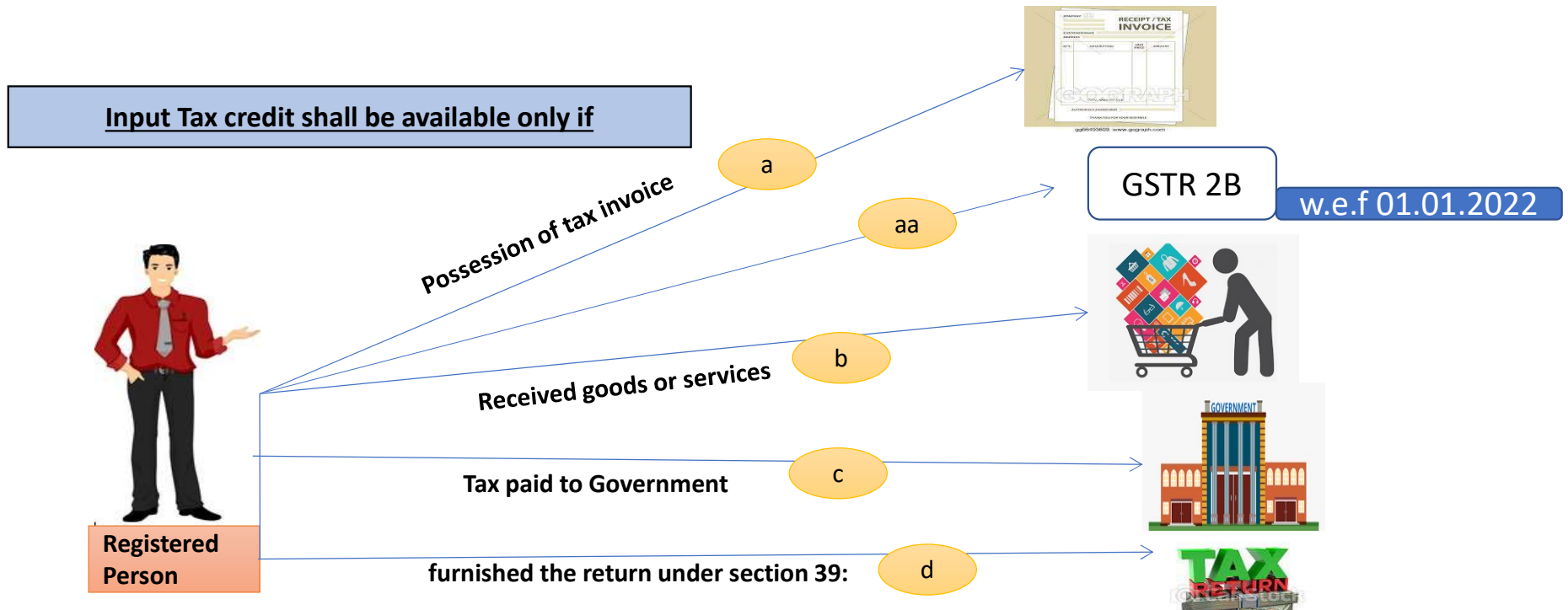
2. In the Central Goods and Services Tax Rules, 2017, —

(i) in rule 36, for sub-rule (4) the following sub-rule shall be substituted, with effect from the 1st day of January, 2022, namely: -

“(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 such invoices or debit notes have been communicated to the registered person in **FORM GSTR-2B** under sub-rule (7) of rule 60.”;



Provided that where the goods against an invoice are received in lots or instalments, the registered person shall be **entitled to take credit upon receipt of the last lot or instalment**:

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 prescribed²⁸:

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.

**Section 16(2)(c) read with Rule 36(4) in light of Recent
Judicial Pronouncements alongwith Amendment of
Section 16(2)(aa)**

- **Question 1: Is registered person entitled to take Input Tax Credit of Invoices where Tax has not been deposited by the Seller (Section 16(2)(c))?**
- **Question 2: Is registered person entitled to take Input Tax Credit of Invoices not reflecting in GSTR 2A/GSTR 2B?**
- **Question 3: Validity of Rule 36(4) in light of Proposed Budgetary Amendment pertaining to insertion of Section 16(2)(aa)?**

Question 1: Is registered person entitled to take Input Tax Credit of Invoices where Tax has not been deposited by the Seller?

Section 16(2)(c) of the CGST Act puts restriction on the entitlement to the credit of any input tax unless subject to the provisions of *section 41 or section 43A*, 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 the said supply; and

Argument No. 1

- Section 16(2)(c) entitles the Buyer to claim the input tax credit when the tax paid on purchases made by him is **actually paid** to the exchequer of the Government by the Seller either through cash or admissible credit.
- It is one of the **nightmare provisions of the GST laws for the Tax compliant persons**, especially when the Purchaser **has no control over seller** to ensure that such tax is deposited with revenue.
- Does this provision hold good in light of the facts **that Purchaser is without any legal authority to ensure this compliance by the seller and missing Matching Concept** (Sec 42 and 43A) which had been envisaged as the backbone of GST by the lawmakers. Imagine, the buyer must not only examine the products before purchasing but also beware of the tax compliances of the vendors from whom it is procuring the goods or availing the services.

Lex non cogit ad impossibila (law does not compel a man to do that which he cannot possibly perform) and Impossibilum nulla obligatio est (law does not expect a party to do the impossible) are well known maxims in law and would squarely apply to the present case.

The onus that section 16(2)(c) puts on the buyer is almost impossible to perform. If the buyer has acted **bonafide**, prima facie there are no grey areas in a transaction and the buyer has paid the tax to the seller, the **buyer should be absolved of his responsibilities to ensure that the tax has been paid to the government.**

If the seller fails to do it, it is the **duty of the tax enforcement machinery**, which has the required financial resources, manpower and legal authority, to track the errant seller and realise the same from him.

The seller himself is a government representative, stepping in its shoes, when he has been given the Registration by the Department itself and the responsibility to deposit the tax after collection from purchaser has been cast on his shoulders. T

Reference can be made to Pre GST jurisprudence in case of past decisions like **M/s Kay Kay Industries(SC) ((2013-TIOL-41-SC-(X))**, **Arise India .Ltd (Delhi HCTS-314-HC-2017)**, **On Quest Merchandising India Pvt. Ltd. (DHCW.P. (C) No. 6093/2017 dated 26.10.2017)**, **Gheru Lal Bal Chand(P&H45 VST 195)**, **Sri Vinayaga Agencies vs. Asst. Comm. Vadapalani & Ors. (2013) 60 VST 283 (Mad)**, **Infiniti Wholesale Ltd.(2015) 55 taxmann.com 64 (Madras)**, **Althaf Shoes (P) Ltd.(2012) 50 VST 179 (Mad.)**, **Shanti Kiran India Pvt. Ltd. Vs. Commissioner, Trade & Tax Department (2013) 57 VST 405 (Del. HC)**, **Britannia India Ltd.(MHC2016-TIOL489-HC-MAD-VAT)**, **L & T vs CCE (2001-127-ELT-807)**, **Jharkhand High Court in the case of Tarapore & Co vs CCT 2020 (1) TMI 414 (Jhar)**.

M/s LGW INDUSTRIES LIMITED & ORS. Vs. UOI RAJ METAL INDUSTRIES & ANR. Vs. UOI (Calcutta HC)(2021-VIL-868-CAL)

GST - Disallowance of input tax credit on the ground that the purchases made by petitioners are from **non-existing suppliers** and the bank accounts opened by those suppliers are on the basis of fake documents and that the petitioners have not verified the genuineness and identity of the suppliers before entering into transaction with those suppliers - Further grounds of denying the input tax credit benefit to the petitioners are that the registration of suppliers in question have been cancelled with retrospective effect covering the transactions period in question - HELD - the respondents to consider afresh the cases of the petitioners on the issue of their entitlement of benefit of input tax credit by considering the documents the petitioners want to rely in support of their claim of **genuineness of the transactions** and shall also consider as to whether **payments on purchases in question along with GST were actually paid or not to the suppliers and also as to whether the transactions and purchases were made before or after the cancellation of registration of the suppliers** and also **consider as to compliance of statutory obligation** by the petitioners in verification of identity of the suppliers - If it is found that all the purchases and transactions in question are **genuine and supported by valid documents** and transactions in question were made before the cancellation of registration of those suppliers, the petitioners shall be given the benefit of input tax credit - writ petition is allowed by remand

IN GST regime also, relief to some extent has been provided in case of

PETITIONER
PURCHASER LGW

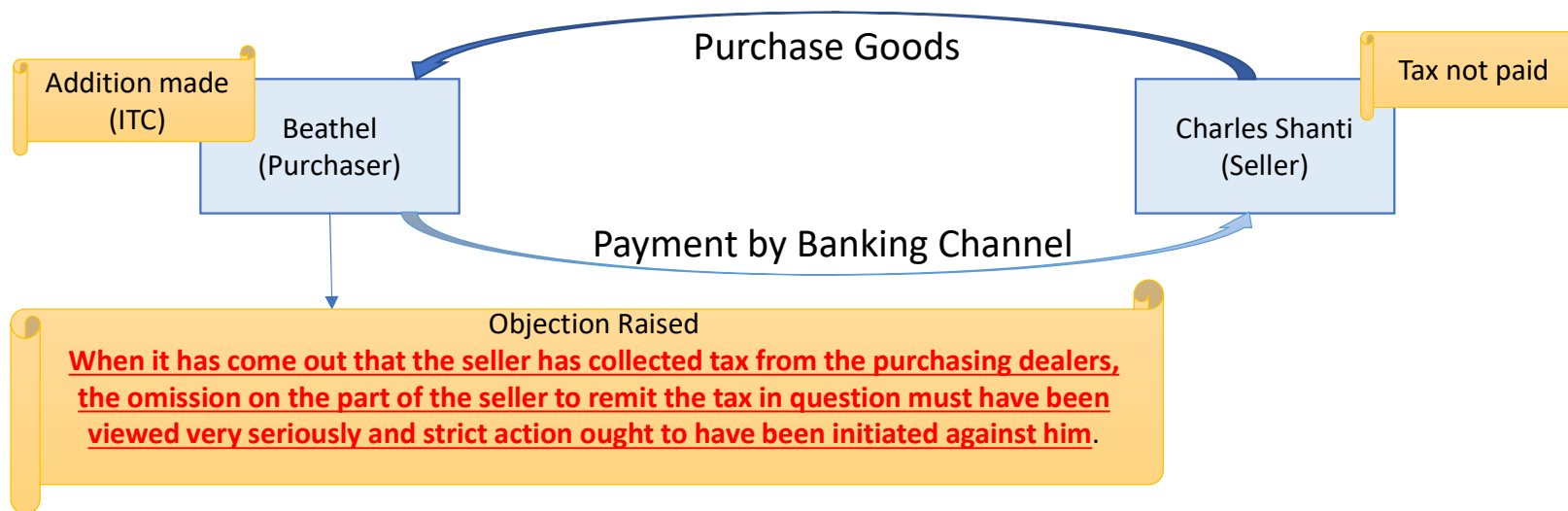
SUPPLIER (NON EXISTENT)
(BANK ACCOUNTS FAKE)

- **Bank Payments**
- **Cancellation later on with retrospective effect**
- **Due diligence exercised to verify the genuineness and identity of the suppliers**
- **Actual Bank Payments**
- **Appear in GSTR 2A**
- **Bonafied No collusion**
- **Onus Department**

IN GST regime also, relief to some extent has been provided in case of

2) 2021 (3) TMI 1020 – [MADRAS] M/S. D.Y. BEATHEL ENTERPRISES where it has been held that when it has come out that the seller has collected tax from the purchasing dealers, the omission on the part of the seller to remit the tax in question must have been viewed very seriously and strict action ought to have been initiated against him. That apart in the enquiry in question, **the Person who supplied / sold the goods, ought to have been examined.**

2021 (3) TMI 1020 – [MADRAS] M/S. D.Y. BEATHEL ENTERPRISES



- That apart in the enquiry in question, the Person who supplied / sold the goods, ought to have been examined. They should have been confronted. - This is all the more necessary, because the respondent has taken a stand that the petitioners have not even received the goods and had availed input tax credits on the strength of generated invoices. The matters are remitted back to the file of the respondent - petition allowed by way of remand.

2) In case of [Bharat Aluminium Company Ltd vs. Union of India Ors.](#) [2021] 128 taxmann.com 11 Hon'ble Chhattisgarh High Court has admitted the hearing and granted ad-interim relief on issue of denying ITC to the Petitioner, on the basis of mis-matching of ITC availed in Form GSTR-3B with the details furnished by suppliers in Form GSTR-2A for the period 2018-19.

Directed the Respondent not to take any coercive steps pursuant to the Recovery Order passed, on depositing 5% of demand within 15 days by the Petitioner. (Grant of AD-INTERIM RELIEF)

3) **Sahil Enterprises v. Union of India - [2021] 129 taxmann.com 233 (TRIPURA)** The petitioner filed writ petition and challenged the vires of Section 16(2)(c) being violative of Articles 14, 19(1)(g) and 300A of the Constitution of India. The Honorable High Court noted that with respect to certain purchases made by the petitioner from another registered dealer after paying full taxes, the selling dealer has not deposited the tax with the Government. The department therefore, put petitioner's input tax credit account under attachment. Since, this issue would require consideration and legislation framed by the Parliament is under challenge, notice is issued to the Attorney General.

4) Apart from above, the **Writ petitions challenging constitutional validity** and vires of the Section 16(2)(c) of the CGST Act have been filed before the High Courts in the case of (a) **M/s Shree Gobind Alloys Pvt. Ltd. Vs. Union of India and others in Orissa High Court dated 05.05.2021** (b) **M/S Surat Mercantile Association & 5 Others Versus Union Of India & 2 Others - 2021-VIL-781-GUJ** The High Courts have admitted the petitions and issued notices to the Government.

5) Clause (iv) of Press Release Dated 04-05-2018: No automatic reversal of credit: **There shall not be any automatic reversal of input tax credit from buyer on non-payment of tax by the seller. In case of default in payment of tax by the seller, recovery shall be made from the seller however reversal of credit from buyer shall also be an option available with the revenue authorities to address exceptional situations like missing dealer, closure of business by supplier or supplier not having adequate assets etc.**

Denouement Question 1



- The Rule of Law is "**No Innocent person should be punished**", which seems to lose relevance in light of provisions of Sec 16(2)(c).
- It has been held that no Liability can be fastened on the purchasing registered dealer on account of non-payment of tax by the selling dealer in the treasury, unless it is fraudulent, or collusion or connivance with the registered selling dealer or its predecessors with the purchasing registered dealer are established.
- ITC should not be denied to the bonafide purchasing dealer merely on fault of selling dealer.

PUNISHING INNOCENT FOR SINS OF OTHERS

Anatomy of the Provisions w.r.t Question 2:

Question 2: Is registered person entitled to take Input Tax Credit of Invoices not reflecting in GSTR 2A/GSTR 2B?

Form GSTR-2A is a dynamic statement which provides month-wise details of supplies declared by the supplier in his Form GSTR-1 based on the date of the supplier's invoice as against Form GSTR-2B which is a static auto drafted ITC statement with freezed monthly data on 11th/13th day of succeeding month.

A bare reading of the Statutory provisions as stated above provides that Law has not prescribed as to which Form should be adopted for availing input tax credit in Form GSTR 3B of a particular tax period
and
whether No Reflection of Invoice in GSTR2A/2B would result in Loss of Credit?????

The following points are worth considering in this regard:

Reflection in GSTR 2A/GSTR2B is not the conclusive proof of payment of Taxes by the supplier.

<u>Instance</u>	<u>Particulars</u>	<u>Remarks</u>
Supplier filed GSTR 1 but not GSTR 3B	Sec 16(2)(c) condition not satisfied Credit reflecting in GSTR 2A/2B	Despite Reflection in GSTR 2A/2B, Sec 16(2)(c) stands non complied. Based on Doctrine of Impossibility and Bonafide of Purchaser needs to be established.
Supplier filed GSTR 3B but not GSTR 1	Sec 16(2)(c) condition satisfied Credit not reflecting in GSTR 2A/2B	Sec 16(2)(c) condition satisfied but no reflection in GSTR-2A/2B.
Supplier didn't file GSTR 3B nor GSTR 1	Sec 16(2)(c) condition not satisfied Credit not reflecting in GSTR 2A/2B	In this scenario only, Non reflection shows Non Payment. Based on Doctrine of Impossibility and Bonafide of Purchaser needs to be established.
Wrong GSTIN quoted in GSTR1, GSTR 3B filled by Supplier	Sec 16(2)(c) condition satisfied Credit not reflecting in GSTR 2A/2B	Rule 36(4) states Invoice/Debit Note must be furnished by the suppliers under sub-section (1) of section 37, in FORM GSTR-1 or using the IFF. The condition of furnishing in GSTR 1 stands satisfied, Sec 16(2)(c) payment stands justified but still Non Reflection in GSTR 2A/2B proves to be a bottleneck in claiming credit in light of Rule 36(4).

2) [2021] 131 taxmann.com 319 (SC)/ [2021] 54 GSTL 257 (SC)[28-10-2021] Bharti Airtel Ltd.

Hon'ble Apex Court has clearly stated that information available on Portal is only a Facilitator and not Primary Source. Grievance of respondent-assessee was primarily on denial of access to information regarding electronic credit ledger due to inoperation of Form GSTR-2A - HELD : No auto-populated electronic data was in vogue in pre-GST regime - Registered person was obliged to do self-assessment of ITC, reckon eligibility to ITC and of OTL based on office records and books of account - For submitting periodic return, registered person had to maintain books of account either manually or electronically on basis of which self-assessment could be done for availing of ITC and of OTL - Assessee was expected to continue same in GST regime and should not be dependent on common electronic portal - Common GST portal was only a facilitator to feed or retrieve information and it needed not be primary source for selfassessment –

3) **Press Release dated 18th October 2018**

It has been clarified vide Press Release dated 18th October 2018 that furnishing of outward details in FORM GSTR-1 by the corresponding supplier(s) and facility to view the same in FORM GSTR-2A by the recipient is in the nature of **taxpayer facilitation and does not impact the ability of the taxpayer to avail ITC on self-assessment basis in consonance with the provisions of section 16 of the Act.** The apprehension that ITC can be availed only on the basis of reconciliation between FORM GSTR-2A and FORM GSTR-3B conducted before the due date for filing of return in FORM GSTR-3B for the month of September, 2018 is unfounded as the same exercise can be done thereafter also.

4) GAPS IN ORIGINAL LAW

As per the matching principle as laid down under the original law, wherein **Section 42** of CGST Act provides for matching, reversal and reclaim of ITC and prescribes a mechanism for matching of ITC claimed by the recipient with the Input tax liability as declared by the supplier. The mechanism for matching of input tax credit as per GST law is designed to be carried out by combined filing of Forms GSTR-1, GSTR-2 and GSTR-3. The mechanism given under section 42 that Supplier will file GSTR 1 where his outward supply is filled and the same will be made available to the recipient under GSTR 2, under which option of the acceptance, rejection or modification can be done and then final return will be filed in form GSTR 3. However, Form GSTR 2 and GSTR 3 has been suspended since the inception hence there was no matching since. Legally GSTR 2 has not been replaced and the Department brought GSTR 2A that is in the authority of view by the recipient and there is no option available to correct it or add the additional invoices which was not reported by the supplier. GSTR 3 replaced the GSTR3B which is a summered format. The department cannot deny credit merely based on mismatching of Form GSTR-3B and Form GSTR-2A, which is not backed-up by any statutory provision.

Since matching under Section 42 is only possible on filing of details of inward supplies under Section 38 and date of filing of Return under GSTR-2 under section 38 has not been notified till date, therefore the date of matching by virtue of First Proviso to Rule 69 has also been extended. Once the date of matching under Section 42 read with Rule 69 has been extended then any action on account of non-compliance of discrepancies as highlighted under the provision of Section 42 cannot be initiated.

5) Substantive Right of Input Tax Credit cannot be taken away based upon Procedural Lapses

As held by **Hon'ble SC in case of Eicher Motors Ltd. And Anr vs Union Of India And Ors. Etc on 28 January, 1999 (SC) and Dai Ichi Karkaria Ltd. Etc. on 11 August, 1999 (SC) and Jayam and Company versus Assistant Commissioner and Another, (2016) 15 SCC 125** that ITC is a Benefit/ Concession by virtue of Statutory provisions which becomes Vested Right on fulfilment of Statutory conditions, which needs to be strictly complied with. Section 16 of CGST Act, 2017 provides Substantive Provisions for claiming ITC. On fulfilment of conditions as specified in Sec 16, ITC becomes a Vested Right which cannot be taken away merely because of procedural lapse of Non Reflection in GSTR-2A/2B. Reliance can be placed on following judgements: Jay Bee Industries Vs. Union of India (Himachal Pradesh High Court) CWP No. 2169 of 2018, A.B. Pal Electricals Pvt. Ltd. vs Union Of India & Ors (2019 (12) TMI 1002 - Delhi HC), I.T.C. Limited vs Union Of India (Uoi) And Anr. 2004 (93) ECC 569, Commissioner of Central Excise, Madras v Home Ashok Leyland (2007) 4 SCC 41, Salem Advocates Bar Association v. Union of India AIR 2003 SC 189 SC, Babaji Kondaji Garad v. Nasik Merchants Co-operative Bank Ltd., [1984] 2 SCC 50, Hospira Health Care India P. Ltd. v. Development Commissioner, MEPZ, SEZ & Heous, Chennai, 2016 (340) ELT 668 (Madras)

6) **DOCTRINE OF IMPOSSIBILIA**

The Department cannot arbitrarily reject the ITC on account of the mismatch between ITC claimed in Form GSTR-3B vis-à-vis ITC reflecting in Form GSTR - 2A on the GST portal. As per Section 16 (2) (c) of the CGST Act, benefit of ITC cannot be denied to the taxpayer on account of default of the supplier, over whom the taxpayer does not have any control. At this juncture, the legal maxim, *lex non cogit ad impossibilia*, as elaborated above, comes into play that postulates that law cannot compel a man to do that which cannot possibly be performed.

Denouement Question 2

Denial of Credit merely due to Non Reflection in GSTR 2A/2B is an acute situation where the taxpayer is able to satisfy the material conditions of availing Input Tax Credit (ITC) on one or the other inward supplies but is unable to avail either because the procedure is dichotomous or the procedure is not there at all due to "the gaps in the statute". The temporary patchwork of filling up to make the statute effective and workable and to sub-serve societal interests leads to a rigorous process of judicial interpretation in the times to come.

A FACILITY TURNED TO LIABILITY ????????

Anatomy of the Provisions w.r.t
Question 3:

Question 3: Validity of Rule 36(4) in light of Budgetary Amendment pertaining to insertion of Section 16(2)(aa) effective from 01.01.2021 vide Not. 39/2021-CT dated 21.01.2021?

Inserted vide N.N. 49/2019-Ct dated 09.10.2019

Rule 36(4) Input tax credit to be availed by a registered person in respect of invoices or debit notes, the details of which have not been furnished by the suppliers under sub-section (1) of section 37, in FORM GSTR-1 or using the invoice furnishing facility shall not exceed ⁵ [5 per cent] of the eligible credit available in respect of invoices or debit notes the details of which have been furnished by the suppliers under sub-section (1) of section 37 in FORM GSTR-1 or using the invoice furnishing facility :

Amendment in
Section 16

Eligibility and Conditions for taking
Input Tax Credit

Budgetary
Amendment
(Effective date
01.01.2022)

Section 16

(1).....

(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 a tax invoice or debit note issued by a supplier registered under this Act, or such other tax paying documents as may be prescribed;

(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;”.

PRIOR TO AMENDMENT BEING IN FORCE

• That provisions of Rule 36(4) transgress the legislative intention and put an additional condition other than the one prescribed under Section 16(2)(c) and hold that the supplier should have filed the statement of outward supplies. The condition as provided under the Rule 36(4) of CGST Rules, 2017 under a subordinate/ delegated legislation goes beyond the scope of the parent legislation i.e. CGST/SGST Act, 2017, as there is no mention of Rule 36(4) in the parent section 16(2). As already envisaged, Rule 36(4) cannot be a decisive factor for Availment of credit in terms of Section 16(2)(c). So there is no legal backing for the Rule 36(4).

• For compliance of Rule 36(4), Genuineness of Purchase is not doubted except in fake invoicing cases but ITC denied merely on procedural issue of Non-Reflection in GSTR-2, although other conditions fulfilled. **The objective of the rule was to curb the Revenue Leakage, but it has impacted business functioning and resulted in nuisance and litigation.**

• Looking at the other side of the coin, can it be considered that widely worded unfettered Section 164 of CGST Act, 2017 come to the rescue of Rule 36(4) as held in case of **WILLOWOOD CHEMICALS PVT. LTD. Versus UNION OF INDIA 2018 (19) G.S.T.L. 228 (Guj.)** and **Nelco Limited Vs Union of India & Ors 2020 (3) TMI 1087.**

As per the legal provisions and judicial powers, the government has power to make rules for the purpose of giving effect to the provisions of the CGST but the substantive provision cannot be inserted by a delegated legislation by using a general rule making power as held in **Devi Datt v. Union of India, AIR 1985 Delhi 195** held that *though the language of Rule 102 of the Displaced Persons (Compensation and Rehabilitation) Rules, 1955 was wider in its ambit and covered the properties comprised in the compensation bill and entrusted to a managing officer for management, “but obviously the said rule has to be construed in the light of the parent Section and it cannot be construed as enlarging the scope of Section 19 itself, 1960 (12) TMI 77 - SUPREME COURT J. K. Cotton and Weaving Mills Co., Ltd. and Bimal Chandra Banerjee v. State of M.P. and Ors., [1971] 81 ITR 105.*

Had there been so!, there would have been no need of Budgetary Amendment by way of insertion of clause (aa) to Section 16(2) of CGST Act, 2017.

Insertion of clause (aa) in Section 16(2) and Amendment to Rule 36(4) vide Not. 40/2021-CT dated 29-12-2021 have been made with intention to provide prospective legal backing for reflection of Invoices/Debit Notes in GSTR 2B, but somewhere challenging ultravires of Rule 36(4) prior to implementation of Amendments. Hence, the amendments being prospective in nature, the validity of Rule 36(4) and status of GSTR 2A prior to the amendments are highly disputed.

Insertion of clause (aa) in Section 16(2) and Amendment to Rule 36(4) vide Not. 40/2021-CT dated 29-12-2021 have been made with intention to provide prospective legal backing for reflection of Invoices/Debit Notes in GSTR 2B, but somewhere challenging ultravires of Rule 36(4) prior to implementation of Amendments. Hence, the amendments being prospective in nature, the validity of Rule 36(4) and status of GSTR 2A prior to the amendments are highly disputed.

Denouement Question 3

Rule 36(4) is ultravires Constitution of India by virtue of Article 14,19(1)(g) and Article 300A in light of missing Matching Mechanism, non-implementation of Section 43A, GSTR 3 in absentia.

Even the related circular 123/42/2019 dated 11.11.2019 goes beyond the provisions of Rule 36(4) by considering GSTR 2A (/GSTR 2B)till 11th /13th of next month.

Merely denying Credit by virtue of Rule 36(4) because GSTR-1 has not been filed is unjustifiable as the particular condition is a part of executive fiat and is not a part of law as passed by the Legislature.

ISSUE No.2

Section 16(4) -Validity of Time Limits

Anatomy of the Provisions w.r.t Issue 2

' Section 16(4) reads as under

“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 due date of furnishing of the return under section 39 for the month of September following the end of financial year to which such invoice or Invoice relating to such debit note pertains or furnishing of the relevant annual return, whichever is earlier”

1) Legal Sanctity regarding Time Limits prescribed u/s 16(4) in light of judgement of Ald Automotive Pvt Ltd vs The Commercial Tax Officer And Ors.2018(364)ELT 3(SC)

It has been held that the condition under which the concession and benefit is given is always to be strictly construed. In event, it is accepted that there is no time period for claiming Input Tax Credit as contained in Section 19(11), the provision become **too flexible** and give rise to large number of difficulties including difficulty in verification of **claim of Input Credit**. Taxing Statutes contains self-contained scheme of levy, computation and collection of tax. The time under which a return is to be filed for purpose of assessment of the tax cannot be dependent on the will of a dealer. The use of word 'shall' in Section 19(11) does not admit to any other interpretation except that the submission of Input claimed cannot be beyond the time prescribed. Section 19(11), in fact, gives additional time period for claim of Input Credit. We, thus, are of the view that time period as provided in Section 19(11) is mandatory.

Hence, Time related ITC Provisions are valid in light of above judgement. However, Does the above judgement by Apex Court hold good in Post GST Regime also is a debatable issue, on which a clear stand by courts is required. The legal grounds like **Entitlement vs. Availment** or the scheme of the statute on which the above judgement was delivered, have definitely not been the same under the GST regime and this subject decision may not still remain overwhelmingly relevant considering the **compelling background for introduction of GST** and a **changed legal scenario** as well as the scheme of the statute in light of **Seamless Flow of Credit**.

2) Non-Obstante Clause in Section 16(2)

Section 16(2) lays down the substantial conditions for Entitlement to credit to a Tax payer and **overrides the entire Section 16 covering Section 16(4)**. Hence, ITC which is taken based upon fulfillment of **substantial conditions as provided in Section 16(2), cannot be taken away by the procedural lapse**. Hence, if a person is in possession of Tax Invoice/Debit Note, have received goods or services, paid the taxes and filed the return u/s 39, he is eligible to take credit. **Even, the late filling of return with payment of requisite interest and late fee regularizes the delay and conditions of Sec 16(2) stands fulfilled**. Hence, once the delay has been regularised such returns has to be construed to be filed within the due date. Then there should be no denial for claiming ITC in late returns as per Section 16(4). **Time limits in Sec 16(4), as Section 16(2) overrides**

3) Entitlement and Credit to Electronic Credit Ledger are two Limbs

The words used in Section 16(4) are 'entitled to take' the credit. The words entitled to take credit signify the eligibility of the claiming credit and claiming the same in the **books of accounts**. As per the provisions of Section 16(1), there are two limbs, **one entitlement to take credit of input tax** charged on any supply of goods or services or both to him **and credit to the electronic credit ledger of such person**.

Section 16(4) provides Time Limit only for **entitlement to take credit of input tax and not on credit to the Electronic Credit Ledger**.

Section 16:- Eligibility and condition for taking input tax credit.

Section 16(1):-

Every registered person shall, subject to **such conditions and restrictions** as may be **prescribed** and in the **manner specified in section 49,** ¹

Rule 36

- be **entitled to take credit of input tax** charged on any supply of goods or services or both to him
- which are **used or intended to be used in the course or furtherance of his business and**
- the said amount shall **be credited to the electronic credit ledger of such person.**

2



Conditions and restriction as per Rule 36

Tax charged on supply of goods and services

Entitled to take credit of input tax, if goods or services used in course or furtherance of his business



Supply of goods and services

Registered Person

4) GSTR 3B is not return under section 39

Section 16(4) provided the reference of the returns filed under section 39. Rule 61 of CGST dealing with form and manner of filing monthly returns specify that input tax credit would be auto populated in the GSTR 3 after submission of GSTR 2 and GSTR 3B would remain a temporary solution till GSTR 1 and GSTR 2 are being postponed. It would be pertinent to know that GSTR 2 never saw the day of light. **Form GSTR-3B was not introduced as a return in lieu of return required to be filed in Form GSTR-3 but was only a temporary stop gap arrangement until due date of filing return in Form GSTR-3 was notified.** GSTR 3B is return or not. As per the judgement of **Hon'ble Gujarat High Court in case AAP And Co. Vs. Union of India [2019] 107 taxmann.com 125 (Gujarat)** the court had ruled out that GSTR 3B is not return under section 39. If the GSTR 3B is not return under section 39, then GSTR 9 is the only return under section 39. Hence, the ITC can be claimed on or before the filing of the GSTR 9 return and therefore the last date for claiming ITC in terms of returns filed under Sec 39 would be the date of filing GSTR 9. There is a retrospective amendment treating GSTR 3B as a return under section 39.

- The above argument is put to end by **[2021] 133 taxmann.com 168 (SC) SUPREME COURT OF INDIA Union of India v. AAP & Company**
- Input tax credit (ITC) - Limitation for availing - Para 3 of Press Release dated 18-10-2018 clarifying that last date for availing ITC for invoices issued from July, 2017 to March, 2018 was last date for filing return FORM GSTR-3B for month of September, 2018, held ultra virus in impugned High Court order - Issue no longer res-integra having been decided in favour of Revenue in Union of India v. Bharti Airtel Ltd. [2021] 131 taxmann.com 319 (SC) - Respondents assessee's attempt to distinguish said judgment, having failed, impugned order held not sustainable - Revenue's appeal succeeded - Sections 16(4) and 39(1) of Central Goods and Services Tax Act, 2017 [Paras 2 to 5]

[2021] 133 taxmann.com 168 (SC)

SUPREME COURT OF INDIA

Union of India

v.

AAP & Company

Input tax credit (ITC) - Limitation for availing - Para 3 of Press Release dated 18-10-2018 clarifying that last date for availing ITC for invoices issued from July, 2017 to March, 2018 was last date for filing return FORM GSTR-3B for month of September, 2018, held ultra virus in impugned High Court order - Issue no longer res-integra having been decided in favour of Revenue in Union of India v. Bharti Airtel Ltd. [2021] 131 taxmann.com 319 (SC) - Respondents assessee's attempt to distinguish said judgment, having failed, impugned order held not sustainable - Revenue's appeal succeeded - Sections [16\(4\)](#) and [39\(1\)](#) of Central Goods and Services Tax Act, 2017 [Paras 2 to 5]

- In case of **CIT v. Vatika Township Private Limited [TS573-SC-2014]** wherein Hon'ble Supreme court had ruled that retrospective amendments should be there in order to solve problems of the taxpayers and not of the department. Hence, this retrospective amendment is increasing the hardship of the taxpayers, which is not right in law. Thus, even if in case if this amendment is sought good the same would apply prospectively and not retrospectively.

5) NO Bar on Delayed Returns

The purpose of Sec 16 (4) is that if any taxpayer is left to claim any ITC for previous financial year, then he is entitled to claim the left over ITC before the due date of the return for September month of the succeeding fiscal year. **It does not bar the claim of ITC by the way of delayed returns if the claim of credit is being made in the respective months and merely there is delay in filing of the returns.** Hence, Section 16(4) should not be invoked in the cases where the credit is claimed in the same month return.

6) INTENT of the Government

A number of notifications have been issued relating to waiver of late fees on the filing of the GSTR 3B. The said notification was being issued d notification after passing of the dates mentioned in section 16(4) for the year 2017-18 and 2018-19. If the government intended to deny the credit, they would have enforced a different form or might have imposed system restriction. Even today the Government intends to implement the new simplified return system and not to continue the current GSTR-3B & 1 filing system. Hence, it an be inferred that the Government still treats GSTR-3B as a temporary return and not a return in lieu under Section 39, in spite of retrospective amendment made in Rule 61(5).

7) Challenge to the provisions of Section 16(4)

Section 16(4) has been challenged before the Hon'ble High Court of Gujarat in case of **M/s. Niyati Constructions Vs UOI** SPECIAL CIVIL APPLICATION NO. 5268 of 2020 staying to take any coercive steps and Hon'ble High Court of Madhya Pradesh in case of **M/s. Shreeji Earth Movers vs UOI** (WP No 05434 of 2020).

8) Violative of ARTICLE 300A ITC due to procedural lapse is in violation of Article 300A of Constitution of India which states that "No person shall be deprived of his property save by the authority of law". Input tax credit under GST would be treated as a property of the taxpayer therefore the same cannot be denied to the tax payers due to non-fulfilling the procedural conditions

9) **PORTAL LAW vis a vis Statutory Provisions** On perusal of Section 39(1) and 39(7), **it is clearly evident that payment of tax is not a pre-condition for filing the return.** Further, the due date for filing return and payment of tax are prescribed independently. Contrary to statutory provisions, the **common portal is not allowing the tax payers to file the return without making payment of tax thereby the common portal had restricted the taxpayers in filing the return without making payment of tax** thereby barred the tax payers in complying with provision of Section 41 which entitles every registered person to claim ITC in the return filed under Section 39. Hence, **the Registered person is unable to file the return under Section 39 unless they make payment of GST, thereby delaying the genuine claim of ITC.** The said issue has been raised in **Agenda to 31st GST Council Meeting Held on 22nd December 2018** that the law permits furnishing of a return without payment of full tax as self-assessed as per the said return but the said return would be regarded as an invalid return. The said return, however, would not be used for the purposes of matching of ITC and settlement of funds. Thus, although the law permits part payment of tax but no such facility has been yet made available on the common portal. This being the case, a registered person cannot even avail his eligible ITC as he cannot furnish his return unless he is in a position to deposit his entire tax liability as self-assessed by him. This inflexibility of the system increases the interest burden and delays the ITC availment.

Denouement Issue

No. 2

In light of Article 19(1)(g) and Article 300A, a substantial right cannot be taken away by a Procedural lapse. Such an interpretation is against the Object of bringing GST and that too in light of broken limbs of the GST Law.

EPILOGUE

- As per the above draconian provisions the very essence of GST seems regarding
- Seamless flow of credit seems to be lost
- Betrayal of the legitimate expectations.

Fight and resistance is the call of the day. It's a weird world. The sooner the stakeholders adversely affected by it fight it, tooth and nail and ensure it is struck down, the better.

However, till such crippled provisions gets a clear pronouncement, it will always keep the taxpayers on tenterhooks as he would be perennially in a state of uncertainty whether the ITC would become due to him or not.

There is always a ray of hope and Light at the end of tunnel. For the government, the honey bee should take the nectar from the flower that its petals should not be disturbed and such provisions just ruins the entire garden.

**CHANGES IN INPUT TAX
CREDIT w.e.f 1st October, 2022
vide Not. No. 18/2022-CT**

Sec 100-118 of Finance Act, 2022 CGST Act

Sec 119-121 of Finance Act, 2022 IGST Act

Sec 122-124 of Finance Act, 2022 UTGST Act

MINISTRY OF LAW AND JUSTICE
(Legislative Department)

New Delhi, the 30th March, 2022 / Chaitra 9, 1944 (Saka)

The following Act of Parliament received the assent of the President on the 30th March, 2022 and is hereby published for general information:—

THE FINANCE ACT, 2022

No. 6 OF 2022

[30th March, 2022.]

An Act to give effect to the financial proposals of the Central Government for the financial year 2022-2023.

BE it enacted by Parliament in the Seventy-third Year of the Republic of India as follows:—

CHAPTER I

PRELIMINARY

1. (1) This Act may be called the Finance Act, 2022.

Short title and commencement.

(2) Save as otherwise provided in this Act,—

- (a) sections 2 to 85 shall come into force on the 1st day of April, 2022;
- (b) sections 100 to 114 shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint.

CHAPTER II

RATES OF INCOME-TAX

2. (1) Subject to the provisions of sub-sections (2) and (3), for the assessment year Income-tax. 74

“(ba) the details of input tax credit in respect of the said supply communicated to such registered person under section 38 has not been **restricted**,”

CHAPTER V INPUT TAX CREDIT

SECTION 16. Eligibility and conditions for taking input tax credit

- (1) Every registered person shall, subject to such conditions and restrictions as may be prescribed and in the manner specified in section 49, be entitled to take credit of input tax charged on any supply of goods or services or both to him which are used or intended to be used in the course or furtherance of his business and the said amount shall be credited to the electronic credit ledger of such person.
- (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 a tax invoice or debit note issued by a supplier registered under this Act, or such other tax paying documents as may be prescribed;

(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.

Explanation. — For the purposes of this clause, it shall be deemed that the registered person has received the goods or, as the case may be, services — (i) where the goods are delivered by the supplier to a recipient or any other person on the direction of such registered person, whether acting as an agent or otherwise, before or during movement of goods, either by way of transfer of documents of title to goods or otherwise; (ii) where the services are provided by the supplier to any person on the direction of and on account of such registered person.

(ba) the details of input tax credit in respect of the said supply communicated to such registered person under section 38 has not been restricted

(c) subject to the **provisions of section 41 or section 43A**, 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 the said supply; and

(d) he has furnished the return under section 39 :

Amendment in section 38 vide Section 104

Substitution of new section for section 38
Furnishing details of inward supplies

~~38. (1) Every registered person, other than an Input Service Distributor or a non-resident taxable person or a person paying tax under the provisions of [section 10](#), [section 51](#) or [section 52](#), shall **verify, validate, modify or delete, if required, the details relating to outward supplies** and credit or debit notes communicated under sub-section (1) of section 37 to prepare the details of his inward supplies and credit or debit notes and may include therein, the details of inward supplies and credit or debit notes received by him in respect of such supplies that have not been declared by the supplier under sub-section (1) of [section 37](#).~~

~~(2) Every registered person, other than an Input Service Distributor or a non-resident taxable person or a person paying tax under the provisions of [section 10](#) or [section 51](#) or [section 52](#), shall furnish, electronically, the details of inward supplies of taxable goods or services or both, including inward supplies of goods or services or both on which the tax is payable on reverse charge basis under this Act and inward supplies of goods or services or both taxable under the Integrated Goods and Services Tax Act or on which integrated goods and services tax is payable under section 3 of the Customs Tariff Act, 1975 (51 of 1975), and credit or debit notes received in respect of such supplies during a tax period after the tenth day but on or before the fifteenth day of the month succeeding the tax period in such form and manner as may be prescribed:~~

~~**Provided** that the Commissioner may, for reasons to be recorded in writing, extend the time limit for furnishing such details for such class of taxable persons as may be specified therein:~~

~~**Provided further** that any extension of time limit notified by the Commissioner of Union territory tax shall be deemed to be notified by the Commissioner.~~

~~(3) The details of supplies modified, deleted or included by the recipient and furnished under sub-section (2) shall be communicated to the supplier concerned in such manner and within such time as may be prescribed.~~

~~(4) The details of supplies modified, deleted or included by the recipient in the return furnished under sub-section (2) or sub-section (4) of [section 39](#) shall be communicated to the supplier concerned in such manner and within such time as may be prescribed.~~

~~(5) Any registered person, who has furnished the details under sub-section (2) for any tax period and which have remained unmatched under [section 42](#) or [section 43](#), shall, upon discovery of any error or omission therein, rectify such error or omission in the tax period during which such error or omission is noticed in such manner as may be prescribed, and shall pay the tax and interest, if any, in case there is a 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 (2) shall be allowed after furnishing of the return under [section 39](#) for the month of September following the end of the financial year to which such details pertain, or furnishing of the relevant annual return, whichever is earlier.~~

GSTR -2 deleted from Law forever

Reasons

- The present **sub-sections to be omitted in entirety** as there is no requirement of furnishing details of Inward supplies by the taxpayer henceforth.
- The **new section to provide that details of inward supplies** shall be made available to the recipients in a prescribed manner. This is essentially an enabling provision to provide for GSTR-2B. The **requirement of reversal of input tax credit arises from Chapter V, and is, therefore, not required to be mentioned under this section.**
- Further, **provision to further make rules incorporated in subsection (2)**

Communication of details of inward supplies and input tax credit

38. (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 **autogenerated 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.

GSTR -2B legally backed by ACT

(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 any 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 subsection 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 persons as may be prescribed.”

Analysis

- GSTR 2B legally backed up. GSTR 2 deleted from law.
- GSTR 2B to contain the details of Eligible ITC and Ineligible ITC.
- Credit to become Ineligible although furnished u/s 37(1) in GSTR 1 on account of Supplier being
 - i. New Registrant (period)(Rules to follow)
 - ii. Default in Payment of tax by Supplier
 - iii. Tax Payable in GSTR 1 of Supplier > Tax Paid in GSTR 3B by specified limit
 - iv. ITC claimed by supplier > Eligible and Non Restricted credit available to Supplier u/s 38(2)(a).
 - v. Default in Payment of tax by Supplier as per Sec 49(12).
 - vi. Such other persons as may be prescribed



If pays Later
on???

Fake Invoice
Controlling Pointers

Rule 86B



e.g Mr Karan filed his GSTR - 1 with output tax liabilities of Rs. 1000 but filed his GSTR 3B with an amount of output tax of Rs.800 (government prescribes limit of 10%). In this case the Purchasers of Mr Karan will see Input Tax Credit on supplies purchased from him in ineligible credits.

SUMMARY

ALL TABLES

View Advisory

ITC available

ITC not available

HELP ?

S.NO.	Heading [Expand All ▼]	GSTR-3B table	Integrated Tax (₹)	Central Tax (₹)	State/UT Tax (₹)	Cess (₹)
Part A	ITC Available - Credit may be claimed in relevant headings in GSTR-3B					
I	All other ITC - Supplies from registered persons ^	4(A)(5) i	304.92	1,21,813.11	1,21,813.11	0.00
	B2B - Invoices		304.92	1,21,813.11	1,21,813.11	0.00
	B2B - Debit notes		0.00	0.00	0.00	0.00
	B2B - Invoices (Amendment)		0.00	0.00	0.00	0.00
	B2B - Debit notes (Amendment)		0.00	0.00	0.00	0.00
II	Inward Supplies from ISD ▼	4(A)(4) i	0.00	0.00	0.00	0.00
III	Inward Supplies liable for reverse charge ▼	3.1(d) 4(A)(3) i	0.00	0.00	0.00	0.00
IV	Import of Goods ▼	4(A)(1) i	0.00	0.00	0.00	0.00
Part B	ITC Reversal - Credit may be reversed in relevant headings in GSTR-3B					

SUMMARY

ALL TABLES

[View Advisory](#)

ITC available

ITC not available

HELP ?

S.NO.	Heading [Expand All ▼]	GSTR-3B table	Integrated Tax (₹)	Central Tax (₹)	State/UT Tax (₹)	Cess (₹)
Part A						
I	All other ITC - Supplies from registered persons ▼	NA ⓘ	0.00	0.00	0.00	0.00
II	Inward Supplies from ISD ▼	NA ⓘ	0.00	0.00	0.00	0.00
III	Inward Supplies liable for reverse charge ▼	3.1(d) ⓘ	0.00	0.00	0.00	0.00
Part B						
I	Others ▼	4(B)(2) ⓘ	0.00	0.00	0.00	0.00

BACK TO DASHBOARD

DOWNLOAD GSTR-2B SUMMARY (PDF)

DOWNLOAD GSTR-2B DETAILS (EXCEL)

Type here to search



**Amendment
in Rule 21**

Cancellation of registration

The registration granted to a person is liable to be cancelled, if the said person:-

- a) does not conduct any business from the declared place of business; or
- b) *issues invoice or bill without supply of goods or services ²[or both] in violation of the provisions of the Act, or the rules made thereunder; or*
- c) *violates the provisions of section 171 of the Act or the rules made thereunder.* **Anti Prof.**
- d) *violates the provision of rule 10A.* **Bank a/c details in 45 days**
- e) *avails input tax credit in violation of the provisions of section 16 of the Act or the rules made thereunder; or*
- f) *furnishes the details of outward supplies in FORM GSTR-1 under section 37 for one or more tax periods which is in excess of the outward supplies declared by him in his valid return under section 39 for the said tax periods; or*
- g) *violates the provision of rule 86B.*
- h) & i) introduced Cancellation on Non filing of Returns**

GSTR1 > GSTR 3B

1. Where a **registered person has applied for cancellation of registration** under rule 20, the **registration shall be deemed to be suspended from the date of submission of the application or the date from which the cancellation is sought, whichever is later**, pending the completion of proceedings for cancellation of registration under rule 22.

OBH removed

2. Where the proper officer has reasons to believe that the registration of a person is liable to be cancelled under section 29 or under rule 21, he may ²[***], **suspend** the registration of such person with effect from a date to be determined by him, pending the completion of the proceedings for cancellation of registration under rule 22.

GSTR 3B

(2A) Where, a **comparison of the returns furnished by a registered person under section 39 with**

- a) **the details of outward supplies furnished in FORM GSTR-1 ; or**
- b) **the details of inward supplies derived based on the details of outward supplies furnished by his suppliers in their FORM GSTR-1,**

GSTR 2A/2B

or such other analysis, as may be carried out on the recommendations of the Council, show that there are significant differences or anomalies indicating contravention of the provisions of the Act or the rules made thereunder, leading to cancellation of registration of the said person, his registration shall be suspended and the said person shall be intimated in FORM GST REG-31 , electronically, on the common portal, or by sending a communication to his e-mail address provided at the time of registration or as amended from time to time, highlighting the said differences and anomalies and asking him to explain, within a period of thirty days, as to why his registration shall not be cancelled.]

(3) A registered person, whose registration has been suspended under sub-rule (1) or sub-rule (2), ³[or sub-rule (2A)] **shall not make any taxable supply** during the period of suspension and shall not be required to furnish any return under section 39.

Explanation.-For the purposes of this sub-rule, the expression "shall not make any taxable supply" shall mean that the registered person shall not issue a tax invoice and, accordingly, not charge tax on supplies made by him during the period of suspension

(3A) A registered person, whose registration has been suspended under sub-rule (2) or sub-rule (2A), shall not be granted any refund under section 54, during the period of suspension of his registration.

4) The suspension of registration under sub-rule (1) or sub-rule (2) ³[or sub-rule (2A)] shall be deemed to be revoked upon completion of the proceedings by the proper officer under rule 22 and such revocation shall be effective from the date on which the suspension had come into effect:]

Provided that the suspension of registration under this rule may be revoked by the proper officer, anytime during the pendency of the proceedings for cancellation, if he deems fit.]

5) Where any order having the effect of revocation of suspension of registration has been passed, the provisions of clause (a) of sub-section (3) of section 31 and section 40 in respect of the supplies made during the period of suspension and the procedure specified therein shall apply.]

Amendment in Section 41 vide Sec 106

Claim of input tax credit and provisional acceptance thereof

To do away with the concept of “claim” of eligible input tax credit on a “provisional” basis and to provide for availment of self assessed input tax credit subject to such conditions and restrictions as may be prescribed

~~41. (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 utilised only for payment of self-assessed output tax as per the return referred to in the said sub-section.~~

41. (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.**

In light of changed Sec 38(2)(b)

(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.”

There shud be no time limits of 16(4)

RULE 86B

Notwithstanding anything contained in these rules, the **registered person shall not use the amount available in electronic credit ledger to discharge his liability towards output tax in excess of ninety-nine per cent. of such tax liability,** in cases **where the value of taxable supply other than exempt supply and zero-rated supply, in a month exceeds fifty lakh rupees:**

Provided that the **said restriction shall not apply where** –

- a) the said person or the proprietor or karta or the managing director or any of its two partners, whole-time Directors, Members of Managing Committee of Associations or Board of Trustees, as the case may be, **have paid more than one lakh rupees as income tax under the Income-tax Act, 1961(43 of 1961) in each of the last two financial years for which the time limit to file return of income under subsection (1) of section 139 of the said Act has expired;** or
- b) the registered person **has received a refund amount of more than one lakh rupees in the preceding financial year on account of unutilised input tax credit** under clause (i) of first proviso of sub-section (3) of section 54; or
- c) the registered person has received a refund amount of more than one lakh rupees in the preceding financial year on account of unutilised input tax credit **under clause (ii) of first proviso of sub-section (3) of section 54;** or
- d) the registered person **has discharged his liability towards output tax through the electronic cash ledger for an amount which is in excess of 1% of the total output tax liability, applied cumulatively,** upto the said month in the current financial year; or
- e) the registered person is –
 - (i) Government Department; or
 - (ii) a Public Sector Undertaking; or
 - (iii) a local authority; or
 - (iv) .statutory body:

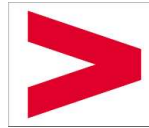
Provided further that the Commissioner or an officer authorised by him in this behalf **may remove the said restriction after such verifications and such safeguards as he may deem fit.”.**

LEGAL PROVISION



Value of taxable supply in a month exceeds 50 Lacs

Shall not use the amount available in electronic credit ledger



99% of such tax liability

i.e Max 99% of Input can be used to discharge output liability

Registered Person

Exempt Supply
Zero Rated Supply

This provision is N.A (can use 100% credit)

Person

proprietor

Karta

Any of its two partners

whole-time Directors, Members of Managing Committee of Associations or Board of Trustees

Paid more than 1 lakh as income tax in each of last two F.Y.

MAT and TDS also considered as Income Tax (not necessarily Cash Payment)

Claimed Refund >100000 in preceding F.Y. on account of unutilized ITC of exports

Claimed Refund >100000 in preceding F.Y. on account of unutilized ITC of inverted duty structure

Output tax paid through cash ledger > 1% of total output, applied cumulatively, upto the said month in current F.Y.

Registered person is
I. Government Department; or
II. a Public Sector Undertaking; or
III. a local authority; or
IV. a statutory body:

Provided further that the Commissioner or an officer authorised by him in this behalf may remove the said restriction after such verifications and such safeguards as he may deem fit.”.

CASE STUDY

Registered Person	Exempt Turnover	Export turnover	Taxable turnover	Rule 86B applicable
February, 2021	1 crore	2 crore	45 lakhs	No (Rs. 45 lakhs)
March, 2021	40 lakhs	15 lakhs	1 crore	Yes (Rs. 1 crore)

March 2021

Taxable Sale = 1 Crore

Monthly turnover > 50 lakhs

Tax @ 5% = 500000

ITC = 800000

What if Export with Payment of Taxes ?

Old		New	
Output	500000	Output	500000
ITC utilized	500000	ITC Utilized (99 % of 500000)	495000
Tax payable	0.00	Tax payable (1%)	5000

Exceptions:- 100 % ITC (Old Rule)

1 F.Y. 19-20, F.Y. 18-19- 139(1) time expired, Income Tax paid > 100000

2

Refund > 1 lakh in F.Y 2019-20

3

April, 2020- Feb, 2021

Output	ITC	Cash Ledger	
10 Cr	99 Lacs	100000	
10Cr <small>2/26/2023</small>	98.5 Lacs	150000	

New Rule

Old Rule

Exports

or

Inverted Duty structure

Illustration 1

Particulars	CGST	SGST	IGST	Total
Output Turnover	5000000	5000000	3000000	1,30,00,000
Output Tax @18%	900000	900000	540000	23,40,000
Input Tax	960000	960000	500000	24,20,000
Minimum Tax payable as per Rule 86B	9000	9000	5400	23,400

Illustration 2

Particulars	CGST	SGST	IGST	Total
Output Turnover	5000000	5000000	3000000	1,30,00,000
Output Tax @18%	900000	900000	540000	23,40,000
Input Tax	820000	820000	540000	21,80,000
Minimum Tax payable as per Rule 86B	9000	9000	5400	23,400
Minimum tax otherwise payable through cash ledger without 86B	80000	80000	-	1,60,000
By paying Rs. 5400 in cash, IGST ITC of 5400 adjusted with C & S, so now Net Payable	77300	77300	5400	1,60,000

Illustration 3

Particulars	CGST	SGST	IGST	Total
Output Tax	900000	900000	540000	23,40,000
Input Tax	820000	1000000	540000	2360000
Minimum Tax payable as per Rule 86B	9000	9000	5400	23400
Payment if 86B not there	80000	0	0	80000
Tax payable as per 86B	80000-5400= 74600	9000 (not adjustable with CGST)	5400 paid in IGST adjusted with CGST.	89000

2/26/2023

CA AANCHAL KAPOOR

90

CHANGES IN TIME LIMITS

(FA Section)SECTION

Existing:

Proposed:

(Sec 100)Section 16(4)
Entitled to take ITC
(of Invoice/DR. Note)

Due date of furnishing of the return u/s 39 for the month of September following the end of FY to which such invoice or debit note pertains or furnishing of the relevant annual return, whichever is earlier

30th day of November following the end of FY to which such invoice or debit note pertains or furnishing of the relevant annual return, whichever is earlier.

(Sec 102)Section 34
Credit and debit notes

September following the end of the FY in which such supply was made, or the date of furnishing of the relevant annual return, whichever is earlier,

30th day of November following the end of the FY in which such supply was made, or the date of furnishing of the relevant annual return, whichever is earlier,

(Sec 103)Section 37(3) Proviso
Furnishing details of outward
supplies (Rectification)

furnishing of the return u/s 39 for the month of September following the end of the FY to which such details pertain, or furnishing of the relevant annual return, whichever is earlier:

30th day of November following the end of the FY to which such details pertain, or furnishing of the relevant annual return, whichever is earlier:

(Sec 105) Section 39(9) Proviso
Furnishing of Returns
(Rectification of GSTR 3B)

the due date for furnishing of return for the month of September or 2nd quarter following the end of the FY to which such details pertain, or the actual date of furnishing of relevant annual return, whichever is earlier.

30th day of November following the end of the FY to which such details pertain, or the actual date of furnishing of relevant annual return, whichever is earlier.

(Sec 112) Section 52(6)
Rectification in TCS Return

The due date for furnishing of statement for the month of September following the end of the FY or the actual date of furnishing of the relevant annual statement, whichever is earlier.

30th day of November following the end of the FY or the actual date of furnishing of the relevant annual statement, whichever is earlier.



**Notification
No. 14/2022-CT**

&

**Circular No.
173/02/2022**

Clarification on issue of claiming refund under inverted duty structure where the supplier is supplying goods under some concessional notification

INTERPRETATION

The refund is admissible in cases where inputs and output goods are same but the output supplies are made under a concessional notification due to which the rate of tax on output supplies is less than the rate of tax on inputs.

EXAMPLES:

- a) Where the inputs are taxable at 18% and outward supply also taxable at 18%, however under a concessional notification provides for reduced rate in special circumstances. Example could be the supply made to Public funded research institution under NN 47/2017-ITR at concession rate of 5% – **IDS refund is admissible.**
- b) An applicant trading in goods has purchased, say goods “X” attracting 18% GST. However, subsequently, the rate of GST on “X” has been reduced to, say 12%. -**IDS refund is not admissible** as per para 3.2 of circular No. 135/05/2020-GST dated 31.03.2020.

[2021] 130 taxmann.com 182 (Gauhati)
HIGH COURT OF GAUHATI
BMG Informatics (P.) Ltd.
v.
Union of India

GST : Provisions of paragraph 3.2 of Circular No. 135/05/2020-GST dated 31-3-2020 providing that even though different tax rate may be attracted at different point of time, but refund of accumulated unutilized tax credit will not be available under section 54(3)(ii) in cases where input and output supplies are same, would have to be ignored

[2022] 140 taxmann.com 326 (Rajasthan)
HIGH COURT OF RAJASTHAN
Baker Hughes Asia Pacific Ltd.
v.
Union of India

GST : Circular No.135/05/2020-GST, dated 31-3-2020 which stipulates that refund under inverted duty structure in terms of section 54(3)(ii) would not be available where input and output supplies are same is repugnant and conflicting to parent legislation i.e. section 54(3)(ii)

[2022] 137 taxmann.com 213 (Calcutta)

HIGH COURT OF CALCUTTA

Shivaco Associates

v.

Joint Commissioner of State Tax, Directorate of Commercial Taxes

AMRITA SINHA, J.

WPA NO. 54 OF 2022

MARCH 11, 2022

Refund - Unutilized ITC - Petitioners were engaged in business of purchasing Liquefied Petroleum Gas (LPG) in bulk quantity and thereafter same was refilled in small bottles/cylinders and then sold to commercial and domestic consumers - Rate of tax on input supply (LPG in bulk) is 18 per cent and rate of on output supply (LPG in small containers for domestic consumers) is 5 per cent - Adjudicating authority by an order rejected petitioner's claim of refund by relying on [Circular No. 135/05/2020-GST, dated 31-3-2020](#) wherein it has been mentioned that taxpayers cannot claim refund in terms of clause (ii) of section 54(3) in cases where input and output supplies remain same - HELD : Refund of unutilized input tax credit was to be allowed under section 54 where credit accumulated on account of rate on inputs was higher than rate of tax on output supplies - Act does not restrict refund only in respect of supplies which are different at input and output stage - However, by way of above circular, Board was curtailing said benefit and making refund only if input and output supplies are different, which amounted to overreaching provisions as laid down in Act - Thus, refund of accumulated input tax credit was admissible [Section [54](#) of the Central Goods and Services Tax Act, 2017/ West Bengal Goods and Services Tax Act, 2017] [Paras 26 to 29] [In favour of assessee]

Amendment in formula prescribed in Rule 89(5) of CGST Rules, 2017 for calculation of refund of unutilized Input Tax Credit on account of inverted rated structure

EARLIER

Maximum Refund Amount

$\{(Turnover\ of\ inverted\ rated\ supply\ of\ goods\ and\ services) \times Net\ ITC \div Adjusted\ Total\ Turnover\} - tax\ payable\ on\ such\ inverted\ rated\ supply\ of\ goods\ and\ services$

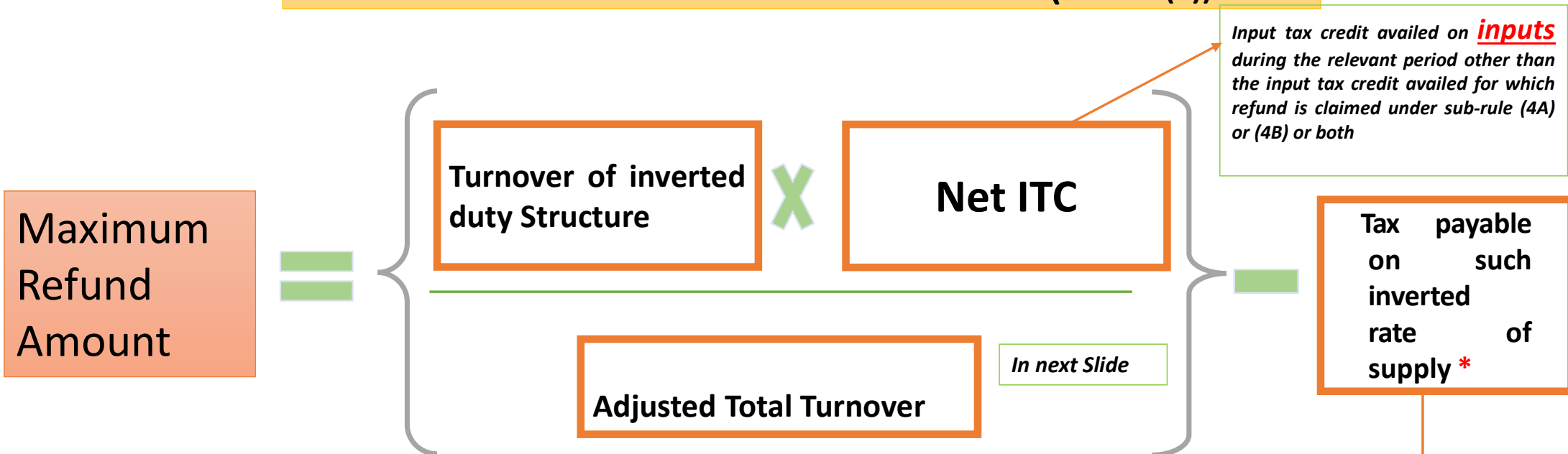
PROPOSED

Maximum Refund Amount

$\{(Turnover\ of\ inverted\ rated\ supply\ of\ goods\ and\ services) \times Net\ ITC \div Adjusted\ Total\ Turnover\} - [tax\ payable\ on\ such\ inverted\ rated\ supply\ of\ goods\ and\ services \times (Net\ ITC \div ITC\ availed\ on\ inputs\ and\ input\ services)]$

Net ITC shall mean input tax credit availed on inputs during the relevant period other than the input tax credit availed for which refund is claimed under sub-rule (4A) or (4B) or both;

MAXIMUM Refund amount calculation (Rule 89(5))



* $\{ \text{tax payable on such inverted rated supply of goods and services} \times (\text{Net ITC} \div \text{ITC available on inputs and input services}) \}$

Illustration

1. ITC on inputs = Rs. 18,000/-
2. Total Turnover = Rs 1,00,000/- (Assuming the entire turnover is in relation to inverted duty structure)
3. Tax on Turnover = Rs 5,000/-
4. Total Output Tax = 5000 will be paid through ITC of Rs. 18000. Therefore the balance available in credit ledger will be Rs 13,000/-
5. Maximum Refund Amount
= $[(100000 \times 18000) / 100000] - 5000 = \text{Rs. } 13.000/-$

EXAMPLE

- Total Turnover = Rs 1 Crore --Inverted Duty (taxable @ 5%) = Rs 50 lakhs
--Other (taxable @ 18%) = Rs 50 Lakhs
- Total ITC availed = Rs 8 Lakhs --on goods = Rs 6 lakhs
--on services = Rs 2 lakhs
- Total Tax paid = Rs 11.5 Lakhs -- Inverted Duty = Rs 2.5 Lakhs
-- Other = Rs 9 lakhs

EARLIER

Maximum Refund Amount

$$\{(50 \text{ l}) \times 6 \text{ l} \div 1 \text{ crore}\} - 2.5 \text{ L} \\ = 0.5 \text{ lakhs}$$

PROPOSED

Maximum Refund Amount

$$\{(50 \text{ l}) \times 6 \text{ l} \div 1 \text{ crore}\} - \{2.5 \text{ l} \times (6 \text{ l} \div 8 \text{ l})\} \\ = 1.125 \text{ lakhs}$$



It reduces the tax paid in proportionate to ITC of goods only.
Hence, the refund amount is higher

Change in formula owing
to SC judgement in case of
VKC Footsteps

Refund Amount TO BE ALLOWED (Para 37 of Circular 125)

BALANCE CHECKS

1. Least of the following amounts:

a) Maximum refund amount as per the formula (CONSOLIDATED FOR ALL HEADS)

- a) The **balance in the electronic credit ledger at the end of the tax period for which the refund claim is being filed**
- c) The **balance in the electronic credit ledger at the time of filing the refund application.**

2. After calculating the least of the three amounts, the amount is divided in Heads as per following sequence

a) Integrated tax, to the extent of balance available;

1

a) Central tax and State tax/Union Territory tax, **equally** to the extent of balance available **and in the event of a shortfall in the balance available in a particular electronic credit ledger**, the differential amount is to be debited from the other electronic credit ledger

2

Amount eligible for Refund (in ₹)

	Balance in Electronic Credit ledger at the end of tax period for which refund is claimed (balance remaining after return for this period is filed) (1) (₹)	Balance in Electronic Credit ledger at the time of filing of refund application (2) (₹)	Refund to be Claimed (3) (₹) *
Integrated Tax	1,072,721.00	1,072,721.00	₹0.00
Central Tax	7,136,621.00	7,136,621.00	₹0.00
State/UT Tax	15,114,311.00	15,114,311.00	₹0.00
CESS	0.00	0.00	₹0.00
Total	23,323,653.00	23,323,653.00	0.00

[Click to view Electronic Liability Ledger](#)

Note: You may view the Electronic Liability Register that displays your liabilities/ dues of Returns and other than Returns. Hence, you may save this Refund Application and navigate to the dashboard to settle the dues first, or may proceed here to submit the application. Please note that the recoverable dues shall be deducted from the gross amount to be paid from the Refund Amount claimed in the refund application received, by the Refund Processing Officer while processing the Refund.

Bank Account Number

Select Account Number *

Note: In case you want refund in another preferred bank account which is not appearing in the drop down list, please add that bank account by filing amendment of registered (non-core) form. Please be informed that, the disbursement of refund amount will be credited to the mentioned account here. Please be advised to keep the mentioned bank account operational till sanctioned refund is successfully disbursed. If disbursement fail due to error of bank account, you may approach proper officer to have different bank account selected.

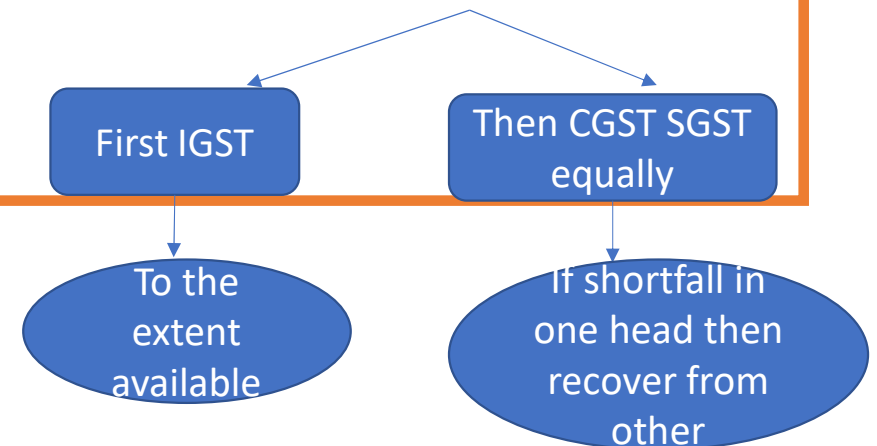
Important Message

EXAMPLE of Refund Amount TO BE ALLOWED

A. Amount calculated as per Formula	Rs. 50000
B. Credit Balance at end of Refund Period	Rs. 30000
C. Credit Balance at end of Filling Refund Application	Rs. 28000

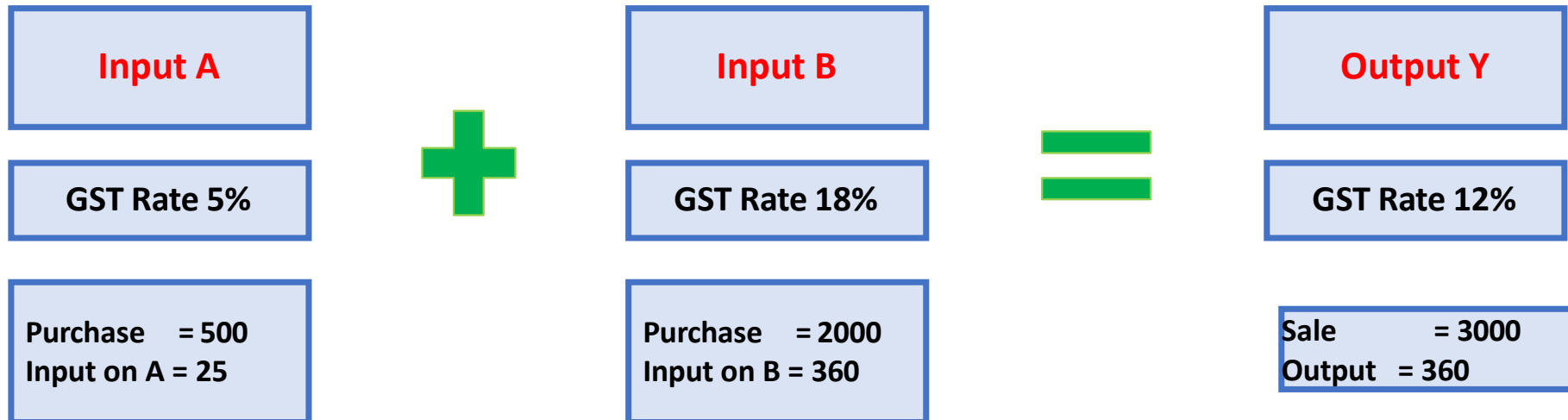
ELIGIBLE REFUND

Rs. 28000/-



Refund amount calculation (Para 54 of Circular 125)

Illustration



1. Total Output Tax of Rs 360/- will be paid through ITC of Rs 385. Therefore the balance available in credit ledger will be Rs 25/-
2. Maximum Refund Amount
= $[(3000 \times 385)/3000] - 360$
= Rs 25/-

Refund Issues

Illustration

Input A

GST Rate 12%

Purchase = 500
Input on A = 60



Input Service B

GST Rate 18%

Purchase = 2000
Input on B = 360



Output Y

GST Rate 12%

Sale = 3000
Output on Y = 360



Not a Case of Inverted Duty

CONCEPT OF INVERTED DUTY TURNOVER (Mixed Turnover)

Illustration Total Turnover of assessee Rs. 8100

MANUFACTURING

Input A

Input B

Output Y

GST Rate 5%

GST Rate 18%

GST Rate 12%

Purchase = 500
Input on A = 25

Purchase = 2000
Input on B = 360

Sale = 3000
Output on Y = 360

TRADING

Input X

Output X

GST Rate 12%

GST Rate 12%

Purchase = 5000
Input on X = 600

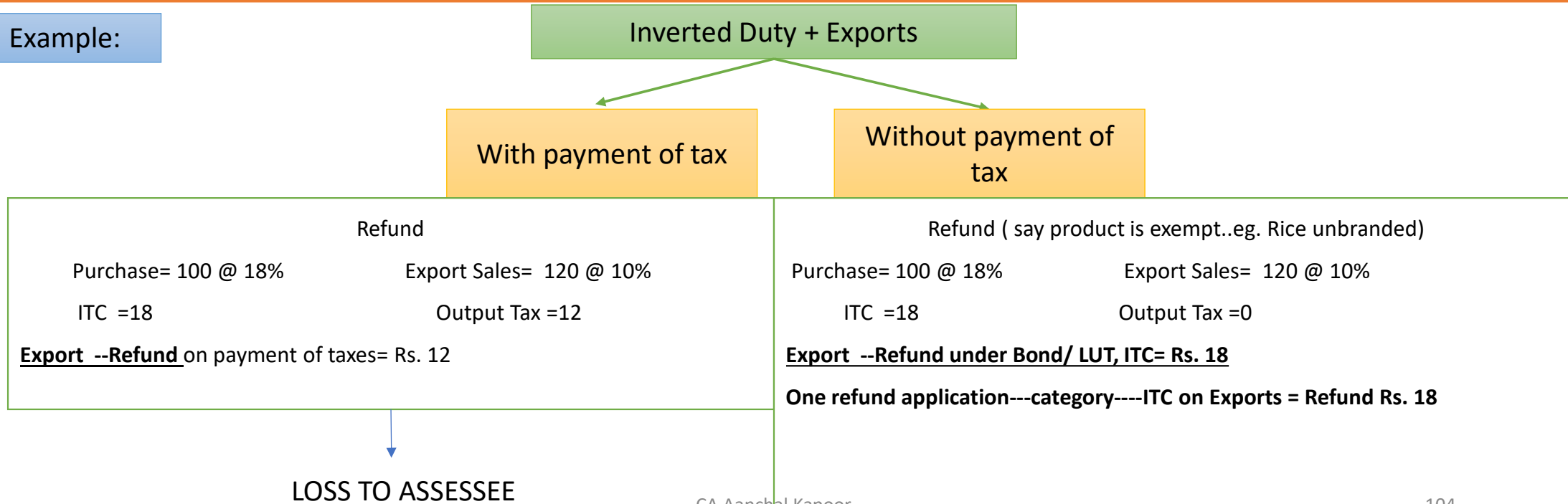
Sale = 5100
Output on X = 612

1. Total Output Tax of Rs. 972/- (360+612) will be paid from input of Rs. 985/- (25+360+600). Balance in credit ledger will be Rs. 13/- (985-972).
2. Maximum Refund Amount
= $[(3000 \times 985)/8100] - 360$
= Rs. 4.81/-
3. Refund amount to be allowed Rs. 4.81/-.

CAN TWO REFUND APPLICATIONS BE MADE FOR SAME PERIOD

- Yes, under different categories. E.g Refund of Cash Balance and Refund on Account of Exports.
- Can Refund of Inverted Duty and Exports be made simultaneously for same period for same invoices?
- No, Inverted Duty and Exports with Payment of Taxes for same invoices cannot be applied simultaneously .(2nd Proviso to Section 53(3). However, if one has domestic and Exports both then for domestic covered by Inverted Duty application can be made under Inverted duty & for Export invoices a separate application will be made for same period.

Example:



OTHER Provisions

Whether Input used directly or indirectly considered in ITC:-

- All input ITC, whether directly or indirectly used.
- Hence ITC of Stores and spares, packing material, materials purchased for machinery repairs, printing & stationery Items, as part of net ITC (Stores and spares the expenditure of which is charged as revenue expenditure cannot be held as capital goods.)

RULE 89(2)(m)

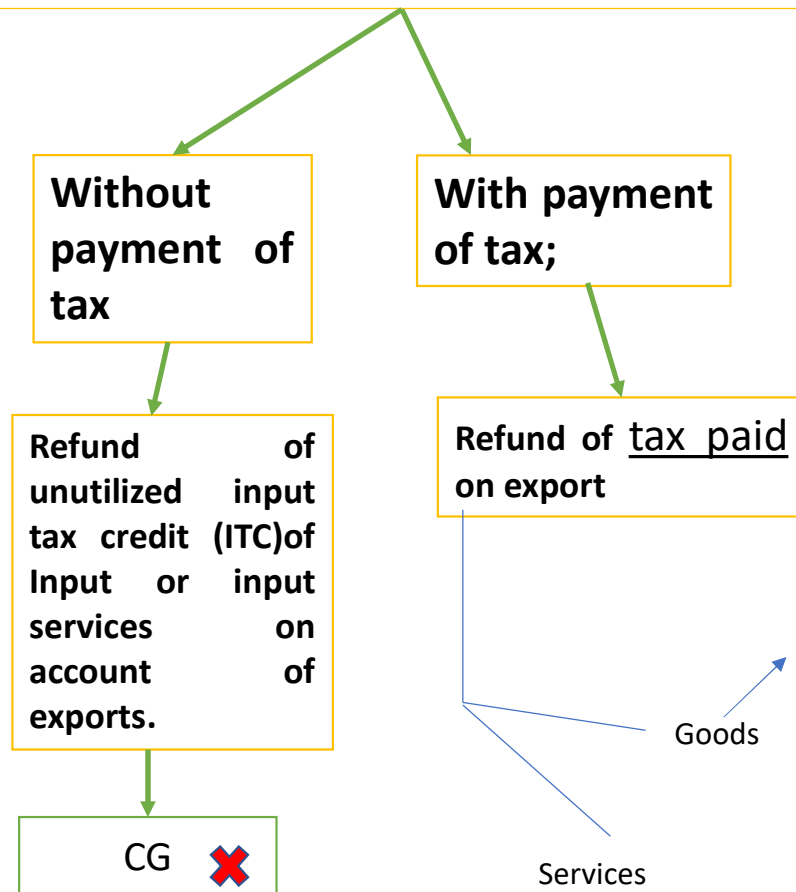
a Certificate in Annexure 2 of FORM GST RFD-01 issued by a chartered accountant or a cost accountant to the effect that the incidence of tax, interest or any other amount claimed as refund has not been passed on to any other person, in a case where the amount of refund claimed exceeds two lakh rupees:

Provided that a certificate is not required to be furnished in respect of cases covered under clause (a) or clause (b) or clause (c) or clause (d) or clause (f) of sub-section (8) of section 54 ;

Self-Declaration or CA Certificate for non-passing on of incidence of tax, interest or any other amount is not required in following cases:

1. Refund of tax paid on account of export of goods or services
2. Refund of unutilized ITC for export of goods or inverted duty rate structure.
3. Refund of tax paid on a supply which has not been provided.
4. Refund of CGST and SGST HELD to be IGST or vice versa
5. Refund of Tax or Interest borne by notified applicants.

Export of goods or services

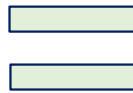


Rule 96 The shipping bill filed by *an exporter of goods* shall be deemed to be an application for refund of integrated tax paid on the goods exported out of India. No Separate Application Required.

Refund amount calculation

Rule 89(4)

Maximum Refund Amount



Turnover of Zero rated supply



Net ITC

Credit availed on inputs and input services

Adjusted Total Turnover

All turnover except Exempt Turnover

Turnover of zero-rated supply of goods means

- the value of zero-rated supply of goods made during the relevant period without payment of tax under bond or letter of undertaking or
- **the value which is 1.5 times the value of like goods domestically supplied by the same or, similarly placed, supplier, as declared by the supplier,**
- whichever is less

Turnover of zero-rated supply of services means

- Payments received during the tax period
- Add: Services completed in current tax period for which advance was received in previous tax periods
- Less: Advance received

Note: Balance Checks in calculating refund amount are same as in REFUND OF UTILISED ITC ON ACCOUNT OF INVERTED DUTY

Rule 89(4)(c) Substituted:- (Refund on Zero Rated Supply Without Tax under Bond)

“Turnover of zero-rated supply of **goods**” means

- the value of zero-rated supply of **goods made during the relevant period** without payment of tax under bond or letter of undertaking **or**
- **the value which is 1.5 times the value of like goods domestically supplied by the same or, similarly placed, supplier, as declared by the supplier,**

whichever is less,

other than the turnover of supplies in respect of which refund is claimed under sub-rules (4A) or (4B) or both;”.

Circular 147/02/2021

Particulars	Before amendment	After amendment
Zero Rated (10000 Kg @8036/100kg)	803600	787500
Domestic (2000Kg @ 5250/100kg)	105000	105000
Total Sales	908600	892500
ITC	100000	100000
Refund= ITC* $\frac{\text{Turnover of Zero Rated Supply}}{\text{Adjusted total Turnover}}$	100000*803600/908600	100000*787500/892500
Turnover of Zero Rated Supply	803600	803600 or 10000*5250/100*1.5= 787500 Whichever is less i.e 787500
Refund	88443	88235
Adjusted Total Turnover	105000+803600= 908600	105000+787500=892500

Rule 89(4)

In the case of zero-rated supply of goods or services or both without payment of tax under bond or letter of undertaking in accordance with the provisions of sub-section (3) of section 16 of the Integrated Goods and Services Tax Act, 2017 (13 of 2017), refund of input tax credit shall be granted as per the following formula—

Refund Amount = (Turnover of zero-rated supply of goods + Turnover of zero-rated supply of services) × Net ITC ÷ Adjusted Total Turnover

Explanation inserted – For REFUND the value of goods exported out of India shall be taken as –

- (i) the Free on Board (FOB) value declared in the Shipping Bill or Bill of Export form, as the case may be, as per the Shipping Bill and Bill of Export (Forms) Regulations, 2017; or
- (ii) the value declared in tax invoice or bill of supply,

Whichever is less

The GST invoice is based on Transaction value and it is CIF including goods and freight. So invoice will include both value of goods and freight. But shipping bill is based upon FOB value. And as per circular 125 para 47 in case of unutilised ITC, **refund is processed on basis of lower of two values of Gst Invoice and SB.** Moreover, even in case of non payment of tax, shipping bill is the deemed application. So refund restricted to shipping bill value in both cases.

Moreover supply of services associated with transit cargo to Nepal is exempt by 9B of 12/2017

Export freight is also exempt.

SPECIMEN OF THE INVOICE (without freight)
Containing FOB + Insurance Charges= CIF

SPECIMEN OF THE SHIPPING BILL

INVOICE					
Country of Origin of Goods. INDIA		Country of Final Destination. NORWAY		No. of Containers. of 20 FT 1 * 20 FT	
Marks & Container No	Nos. & Kind of Pkgs	Description	Quantity	Rate Per M.T USD	Amount
(1) Golden Tiger. Brand	Old crop	Indian Basmati Rice	22.000 M.Tons.	781.64 FOB	17196.08 USD FOB
2.000 M.T 5 KG *4 = 20KG = 1100 Bags packed in Printed New Non Woven Bags, Inside transparent Polythene Bag faster bagged in Plain Transparent PP bags Insurance Charges					30.000 USD OSLO
Total Qty 22.000 M.T.S Total Bags 1100		22.000 M.T.S	C&I		17226.08 USD
Amount Chargeable in Words		USD : Seventeen Thousand Two Hundred Twenty Six and Eight Cents Only			
No. of Bags : 1100		NETT.WT : 22.000 M.T.S	GRS WT : 22.176 M.T.S		
Consignment Details :-		SUPPLY MEANT FOR EXPORT UNDER BOND/UNDERTAKING WITHOUT PAYMENT OF IGST			
Sl No	DT	Cont. No	Seal No	Remarks	
E.No 1204002401					
Declaration :- I/We Declare that this invoice shows the Actual Price of the goods described and at all particulars are true, correct & goods are of Indian origin. subject to Amritsar Jurisdiction.				Signature: _____ Auth. Sign	

VALUE OF REFUND = LOWER 17196/-

PART - I - SHIPPING BILL SUMMARY											
A STATUS											
B DECLARATION DETAILS											
C VALUE ADDED											
D EXPR.											
E MANIFEST DETAILS											
F INVOICE SUMMARY											
G EQUIPMENT DETAILS											
H CHALLAN DETAILS											
I ANNEX DETAILS											
J PROCESS DETAILS											
K VALUE ADDED											
L ITEM DETAILS											

1.FOB VALUE	2.FREIGHT	3.INSURANCE	4.DISCOUNT	5.COMMISSION	6.DEDUCT	7.P/C	8.EXCHANGE RATE	
1245856	0	2174	0	0	0	0	1 USD INR 72.45	
8.DEDUCTIONS	9.CESS	10.DUTY	11.FSC NO.	12.IGST AMT	13.CESS AMT	14.IGST VALUE	15.RODTEP AMT	
0	0	0		0	0	0	6229	
1.MAWB NO.	2.MAWB DT	3.HAWB NO.	4.HAWB DT	5.N.O.C.	6.SNO	7.INV NO.	8.INV AMT.	9.CURRENCY
					1	RSRM/4146	17226.08	USD
1.CONTAINER	2.SEAL	3.DATE	4.S No	5.SR.NO	6.CHALLAN NO	7.PAYMT DT	8.AMOUNT	
TGBU3160230	019731	08-APR-21	1					
1.SEAL TYPE	2.NATURE OF CARGO	3.NO. OF PACKETS	4.NO. OF CONTAINERS	5.LOOSE PACKETS				
SELF SEALED	CONTAINERISED	1100	1	0				
6.MARKS & NUMBERS	GOLDEN TIGER BRAND							
1.EVENT	2.DATE	3.TIME	4.LEO NO.				1/2	
5.Submission	07-APR-21	19:35	6.LEO Date.				08-APR-21	
5.Assessment	08-APR-21	00:00	8.BRC Realisation Date				31-JAN-22	
7.Examination	08-APR-21	00:00						
9.LEO	08-APR-21	17:42						

1.INVOICE VALUE	2.FOB VALUE	3.FREIGHT	4.INSURANCE	5.DISCOUNT	6.COMMISSION	7.DEDUCT	8.P/C	9.EXCHANGE RATE
17226.08 USD	17196.08 USD	0 USD	30 USD	0	0	0	0	1 USD INR 72.45
1.Item No.	2.HS No	3.DESCRPTION	4.QUANTITY	5.UQC	6.RATE	7.VALUE(FC)		
1	10063020	INDIAN BASMATI RICE APEDA RCAC NO.311812	22	MTS	781.64	17196.08		

Option Comparison When Capital Goods are Involved

OUTPUT

Illustration
Exported goods worth Rs 100000/- chargeable to GST @ 12%=Rs. 12000

INPUTS

	Type of ITC	CGST	SGST	IGST	Total
1	Inputs	1000	1000	1000	3000
2	Input Services	500	500	1000	2000
3	Capital Goods			5000	5000
	Total	1500	1500	7000	10000

Option 1 Without payment of tax

- LUT should be furnished
- No output tax will be payable.
- Refund of Inputs Tax Credit Rs 3000 and Input services Rs 2000.
- No refund of Rs 5000 of ITC on capital goods

Option 2 With payment of tax

- IGST of Rs 12 000/- shall be payable as exports are with payment of taxes.
- Rs. 12000 paid 10000 thru Credit Ledger & 2000 in cash
- Refund amount Rs. 12000 and there is no fund blockage.
- Easier to get Refund

Option Comparison When Input Tax Credit has CESS

OUTPUT

Illustration

Exported goods worth Rs 100000/- chargeable to GST @ 5%=Rs. 5000

INPUTS

S. No	Type of ITC	CGST	SGST	IGST	Cess	Total
1	Inputs	1000	1000	1000	1500	4500
2	Input Services	500	500	1000	0	2000
3	Capital Goods			0	0	0
	Total	1500	1500	2000	1500	6500

Option 1 Without payment of tax

- LUT should be furnished
- No output tax will be payable.
- Refund of Inputs Rs 4500 (including cess) and Input services Rs 2000. Total Rs 6500/-

Option 2 With payment of tax

- IGST of Rs 5000/- is payable as exports are with payment of taxes.
- Rs. 5000 will be adjusted from C,S,I
- Cess cannot be used for payment above IGST and will not be available as refund.

Option Comparison When Stock Held Inside

OUTPUT

Illustration

Exported goods worth Rs 100000/- chargeable to GST @ 5%=Rs. 5000

INPUTS

S. No	Type of ITC	CGST	SGST	IGST	Cess	Total
1	Inputs	10000	10000	10000	0	30000
2	Input Services	500	500	1000	0	2000
3	Capital Goods			0	0	0
	Total	10500	10500	11000	0	32000

Option 1 Without payment of tax

- LUT should be furnished
- No output tax will be payable.
- Refund of Inputs Rs 30000 and Input services Rs 2000. Total Rs 32000/-

Option 2 With payment of tax

- IGST of Rs 5000/- is payable as exports are with payment of taxes.
- Rs. 5000 will be adjusted from C,S,I
- Refund of Tax Paid Rs. 5000/-

THANK YOU

Disclaimer

The views expressed are solely of the author and the content of this document is solely for information purpose and not to be construed as a professional advice. In cases where the reader has any legal issues, he/she must in all cases seek independent legal advice.



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