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20% Formula for Input Credit - Is History repeating itself?



Seetharaman K C on 23 October 2019

The Central Board of Indirect Taxes and Customs issued notification no 49/2019 dated 09-10-2019, amending the rules for claiming Input Tax Credit wherein the government has capped the ITC that a registered person can claim.



Amending the Central Goods and Services Tax Rules, 2017 by inserting a new clause (4) in Rule 36 the Government has sought to restrict the credit available to a Bonafide tax payer who has paid the tax and is entitled to the credit. The new rule requires that the Bonafide purchaser of goods and services needs to ensure that the person who supplied him the goods and or services has filed his GSTR1 return properly and has also included these details like his GSTN No etc. properly in the return filed by him. The new rules read as under :

Rule 36 Clause(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 uploaded by the suppliers under sub-section (1) of section 37, shall not exceed 20 per cent of the eligible credit available in respect of invoices or debit notes the details of which have been uploaded by the suppliers [in Form GSTR-1],"

The new rules, called the Central Goods and Services Tax (Sixth Amendment) Rules, 2019, came into effect on October 9.

Now the issue which comes forth from the above is that an assessee who has paid the input tax credit on his purchases cannot claim the credit unless the person who supplied him the goods or services files his GSTR1 which also means that besides paying taxes the bonafide purchaser also has to ensure that the suppliers associated with him file their returns properly.

The above issue is nothing new as far as the availment of Input tax Credit is concerned as in the erstwhile VAT regime itself the Honorable Supreme Court of India has upheld the decision of the Honorable Delhi High Court in On Quest

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Merchandising India Pvt. Ltd v. Government of NCT of Delhi & Ors (2017 (10) TMI 1020 - DELHI HIGH COURT) . including W.P. (c) 2106/2015 filed by Arise India Ltd (2018 (1) TMI 555 - SC ORDER) wherein demands raised by the revenue on the petitioner were quashed. The details of the above case is discussed hereunder:

The appellant, being a registered dealer, availed the ITC of the VAT paid on inputs procured from sellers duly registered under VAT and the VAT officer issued a default assessment order invoking Section 9(2)(g) of the DVAT Act

The relevant provisions of Section 9 (2) of the DVAT Act are reproduced below:

9(2) No tax credit shall be allowed -

- (a) in the case of the purchase of goods for goods purchased from a person who is not a registered dealer;
- (b) for the purchase of non-creditable goods;
- (c) for the purchase of goods which are to be incorporated into the structure of a building owned or occupied by the person; Explanation.- This sub-section does not prevent a tax credit arising for goods and building materials that are purchased either for the purpose of re-sale in an unmodified form, or for the performance of a works contract on a building owned or occupied by another;
- (d) for goods purchased from a dealer who has elected to pay tax under section 16 of this Act; (e) for goods purchased from a casual trader;
- (f) to the dealers or class of dealers specified in the Fifth Schedule except the entry no.1 of the said Schedule.”
- (g) to the dealers or class of dealers unless the tax paid by the purchasing dealer has actually been deposited by the selling dealer with the Government or has been lawfully adjusted against output tax

Section 9(2)(g) requires the purchasing dealer to ensure, for the purposes of claiming ITC, that the selling dealer has deposited VAT with the Government or has lawfully adjusted it against such selling dealer's output tax liability. What distinguishes section 9(2)(g) from Sections 9(2)(a) to (f) is that the conditions specified in the later are those within the control of and can be vouched by the purchasing dealer, the condition under Section 9(2) (g) is not.



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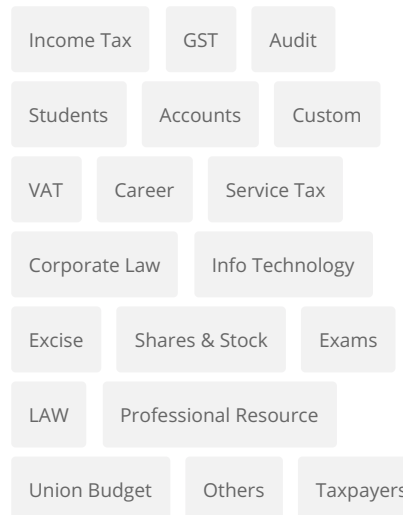
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The issue which was brought before the Delhi High Court was that Section 9 (2) (g) treats both the 'Defaulting purchaser' and the 'Bonafide purchaser' at par whereas they constitute two different class of persons and by treating them equally, the legislation is violative of Article 14 of the Constitution



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The Delhi High Court held the following:

1. As long as the purchasing dealer has verified the TIN of the seller from the tax invoice issued to him and matched the transaction reported by the seller in his Annexure 2B with Annexure 2A, he cannot be expected to keep track of whether the selling dealer has, in fact, deposited the tax collected with the Government or has lawfully adjusted it against his output tax liability.
2. Purchasing dealer would have no access to the return filed by the selling dealer since under Section 98 (1) of the DVAT Act, those are meant to be confidential.
3. The Revenue is not helpless if the selling dealer commits a default in either depositing or lawfully adjusting the VAT collected from the purchasing dealer. There are provisions in the DVAT Act which empower the Revenue to proceed to recover the tax in arrears from the selling dealer. There is also Section 40A, in terms of which, a purchasing dealer acting in connivance with a selling dealer can be proceeded against.

Against the Order of the Delhi HC, the Revenue preferred a SLP which was dismissed by the Supreme Court (2018 (1) TMI 555 - SC ORDER)

The present amendments made by the Government by insertion of Clause (4) under Rule 36 of the Central Goods and Services Tax Rules, 2017 is nothing but history repeating itself as it requires that apart from paying the taxes as per the invoices raised by his suppliers the Bonafide Purchaser of goods and services is the one who needs to ensure that his suppliers associated with him file their GSTR1 returns properly.

There are enough and more penal provisions under the GST Act with which the Defaulting Supplier/ Guilty Purchaser who act in connivance and as a cartel can be prosecuted and it is definitely unfair to restrict the input tax credit available to the Bonafide Purchaser

Recommended Read

- [Reversal not required by Restaurants and Outdoor Caterers under Rule 6\(3\) of Cenvat Credit Rules, 2004](#)
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DIVAKARAN NAIR

29 days ago

@Bazeer Ahmed In the beginning of GST in 2017, they had created a window of GSTR2 for the purchaser/service receiver to feed missing or mismatched invoices and submit. It was mysteriously vanished from the system after August 2017. Don't know the

reason

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SEETHARAMAN K C

[18 days ago](#)

They would have found it difficult to manage

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PULAK RAY CHAUDHURI

[about a month ago](#)

Greatful to you for this with real life analysis. Our common sense say it impractical but surprised to see the lawmakers ignoring this.

 Reply  Like

BAZEER AHMED

[about a month ago](#)

Like uploading our sales invoice details in our GSTR1, if any provision is made in filing our GSTR 3B or any other name, we are ready to upload our purchase details along with our suppliers' GSTIN for claiming our ITC. GST authority may tally / reconcile our claims. At the time of GSTR3b return filing, we dont know the suppliers who are not filed correctly and in case of small business they will file quarterly until then we cannot claim our ITC. The period is very short think last day of GSTR1 is 11th / 10th of succeeding month within 9 days say by 20th day of succeeding month is your due date of GSTR3b. If the supplier file after 20th day of a month then we lose 80% what a unfair rule.

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PARAMESWARAN THATHAMANGALAM

[2 months ago](#)


It is better to amend the rule such that from next FY onwards, all businesses must file GSTR1 for April 1920, in May 1920, on any day between 1st to 31st and pay his full tax liability. Without paying tax , GSTR1 Filing must be made impossible. Let them Claim ITC of April 1920 in the GSTR1 of May, to be filed in June 1920. Those who do not file GSTR1 for any month , on or before the last day of next month, should be penalised heavily. One of my supplier defaulted GSTR1 for more than 18 months and eventhough he filed it very late, his sales invoice to me is not reflecting in my GSTR2A. I am absolutely in the dark whether he did not upload the sale invoice or because of system failure , it is not appearing in my GSTR2A. Anyway the new amendment will give more misery to the businessmen. 20% is a meagre amount and it is better to avail nil ITC than going for it .

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SUDIP GUPTA

[2 months ago](#)

You should have compared provisions of Act and not the rules. Further you have not referred to Mahalaxmi case ..

 Reply  Like

SEETHARAMAN K C

[2 months ago](#)

Arise India case was confirmed by Supreme Court whereas the Mahalaxmi case was not that's why I did not refer to t

his case.

[↩ Reply](#) [👍 Like](#)

PARAMESWARAN THATHAMANGALAM

[2 months ago](#)

I have a supplier who submitted his GSTR1 for April 2018 on 29.07.2019. what action the GST dept has taken against him. He already paid the money collected from me through GSTR3B. But I am to wait till this time to claim the refund. What a pity

[↩ Reply](#) [👍 Like 1](#)

P K SINGH

[2 months ago](#)

This is not practical and against the honest taxpayers. This types of rules at this juncture of gst may create more problem for gst regime. We can understand that this sub rule is because of fake invoices racket busted by department but govt has to find other ways to trap tax evaders.. govt must amend this sub rule..

[↩ Reply](#) [👍 Like 1](#)

NEERAJ BHANDARI

[2 months ago](#)

It is a procedure to make businessman in that condition that he has no personal expense only he have to pay govt..in form of taxes while purchase and sale after that Itr of income in the end govt officials issues demand notice and showing that indian businessman is a thief ...that business may be running in white ... thanks to finance ministry ..after that what left is saved in bank ..th at bank is saying your money is not safe according to RBI guidelines what's going on in our country.....

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