

GST Alert 09/2022-23

Date 29.09.2022

### Changes in GST Law

Government has notified certain provisions in GST law which will be effective from 1.10.2022, these changes are notified vide notification 18/2022-Central Tax dated 28.09.2022, following is the gist of these legal changes:

**All these changes in law are effective from 1<sup>st</sup> October 2022**

#### **1. E-invoice for business having turnover of 10 crores or above**

Threshold turnover limit for businesses eligible for issuance of E-Invoices has been further reduced to 10 crores effective from 1<sup>st</sup> October 2022. Detailed note on the same is attached herewith, it explains all the issues relating to it.

#### **2. ITC to be availed as per GSTR 2B [Section 16 (2)(ba)]**

It has been provided that ITC on invoice or debit note can be availed only when the details of such ITC in respect of said invoice/debit note have not been restricted in the GSTR-2B.

Consequent to this amendment, person would be eligible to claim ITC only when the details of invoices/debit notes made available to him electronically on the GSTN Portal are not restricted in the auto-generated statement referred to as GSTR-2B.

#### **3. ITC for a Financial Year can be availed latest by 30<sup>th</sup> November of Subsequent financial year [Section 16 (4)]**

This provision is amended to give more time to taxpayers to avail ITC pertaining to Last Financial year. Earlier, the law allowed one to avail ITC for a financial year only upto the due date of GST return for September of next year.

**Practically the last date to avail ITC earlier was 20<sup>th</sup> Oct (due date of Sept GSTR 3B) which now has been extended by one month, hence one can now avail left over ITC of a Financial year in GSTR 3B of October next year which has to be filed latest by 30<sup>th</sup> November.**



To summarise, one will have to fulfil following conditions to avail ITC:

- a. Goods or service must be meant for Business use
- b. He must be in possession of Invoice
- c. He has received the goods or services
- d. The supplier has furnished the Invoice in his GSTR 1 and the recipient is able to see it in his GSTR 2A
- e. ITC is not restricted in auto generated GSTR 2B**
- f. Supplier has filed GSTR 3B
- g. Payment of consideration and Tax thereon is paid to the supplier within 180 days of the date of Invoice. If the payment is made later then 180 days, then recipient is required to reverse the credit and is entitled to re-avail the ITC as and when the payment is made to the supplier.
- h. ITC for an expense incurred in a financial year can be availed latest by 30<sup>th</sup> November of Subsequent financial year.**

#### **4. Registration Cancellation / Suspension norms changed [Section 29 (2)]**

##### **A. Composition Scheme**

If a composition tax payer misses to file any return for beyond 3 months from the due date of that return, officer can cancel his registration.

Prior to this amendment, cancellation was permitted only when there was non-filing of 3 quarterly returns.

##### **B. Regular Taxpayer**

Officer can cancel the registration if:

- a. Registered person has not furnished returns for a continuous period of 6 months
- b. Where a person is required to file quarterly returns, has not furnished returns for a continuous period of 2 quarters.



### 5. Credit Notes for reduction in Taxable Value

Credit notes in relation to a supply of goods or services shall be declared in GSTR 1 for the month during which such credit note has been issued **but not later than 30<sup>th</sup> November** of the subsequent financial year or the date of furnishing of the relevant annual return, whichever is earlier. Earlier, date for doing so was 20<sup>th</sup> October (GSTR 3B of September)

### 6. GSTR 2 is dead [Section 38]

GSTR 2 return which was to be filed by the recipient for uploading ITC invoices and which gave him the power to notify the supplier and force him to pay the tax is now been given a quiet burial. Entire provision is being deleted and now whatever the supplier uploads will be considered as gospel truth, recipient has no means and power to do anything if any invoice received by him is not reported by the supplier. Entire compliance regime has crumbled because of the incompetency of the Portal.

### 7. ITC balance can be utilised for payment of Pre-deposit [Section 41]

Orissa High Court in the case of Jyoti Construction had held that ITC ledger balance cannot be used for payment of Pre-deposit for filing any appeal. This judgement was based primarily on Section 41(2), said provision has now been deleted.

Further, new section 41 provides that:

- a. If the supplier does not pay the Tax, recipient will have to reverse the ITC so availed along with applicable interest.
- b. If the said supplier later on makes the payment of that tax, the recipient can re-avail the amount of credit reversed by him.

### 8. Late fee for delay in filing of return now levied on TCS return filers [Section 47]

Earlier late fee for delay in filing of returns was not levied on TCS returns, same has now been introduced. Late filing of TDS returns is still out of the ambit of late fee because essentially TDS returns are filed by PSUs and Government departments.

Age old doctrine of 'King can do no wrong' is still relevant.



### **9. Interest on wrong availment of Input Tax Credit would be payable only if the same is utilised – Retroactive Amendment – [Section 50(3) and Noti 9/2022 - CT]**

If any person has availed any Input Tax Credit (ITC) which he is not eligible to avail, he was asked to pay interest thereon even if it was established that the said wrong ITC was not utilized. A retrospective amendment was made section 50 (3) saying that effective from 01.07.2017, interest would become payable only if the wrongly availed ITC was utilised for payment of tax and not otherwise. This amendment is now notified and therefore **it would be applicable from 01.07.2017 onwards.**

#### **Conclusion:**

Conditions for availing credit are increasing with every budget and amendment. For availing ITC one has to cross a matrix of so many provisions and rules, suppliers are the kings and recipients are at their mercy, they have no recourse in the law which they can exercise to establish their right to avail legitimate ITC. Idea of GST was sold to the public with the notion of equality, with passage of time and regal failure of GSTN, recipients have been left to fend for themselves.

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