

Treading the GST Path - 54

Missed out ITC and unmatched ITC - Removal of Difficulty Order No. 2/2018 Central Tax Dt. 31.12.2018

- Explained.

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This article was published on 16.01.2019. It is opined in the Article that the scope of Removal of Difficulty Order 2/2018 is limited only to enable availment of unmatched credit and no fresh credit pertaining to 2017-18 could be taken. After its publication, the issue was re-visited based on various inputs received from various quarters. Though the view taken in this article that no missed out credit pertaining to 2017-18 could be taken now in view of the Removal of Difficulty Order, is based on the basis of a conjoint reading of the provisions of Section 16 (4), Section 37; and Section 42, it is also quite possible to take a different view that in view of the plain language of the proviso now being inserted under Section 16 (4), any ITC pertaining to 2017-18, which could not be taken till now, could be taken on or before 20.04.2019. Hence, it is advised that any ITC pertaining to 2017-18 which could not be availed so far, could be availed upto 20.04.2019 on the basis of the Removal of Difficulty Order and there are reasonable legal grounds to defend such availment, if the same is objected to by the Department. **For example, if any RCM liability of GST for the year 2017-18 (say, GST on ocean freight for CIF imports) is now paid, ITC of the same could be taken upto 20.04.2019.**

Section 42 of the CGST Act deals with "Matching, reversal and reclaim of input tax credit" and Section 43 of the Act deals with "Matching, reversal and reclaim of reduction in output tax liability". Simply stated the ITC availed by a recipient of supply shall match with the corresponding output tax liability declared by the supplier in his monthly return. In case of any mismatch, either due to non filing of GSTR 1 return by the supplier or due to wrong filing of GSTR 1 return by the supplier or due to any mistakes in claiming ITC by the recipient, detailed procedures, as to how the same has to be dealt with, when such unmatched credits have to be reversed and as to when the same can be reclaimed, etc. are prescribed in Section 42.

As per Section 16 (4) of the Act, credits pertaining to a financial year can be taken upto the due date for filing GSTR 3 for the month of September in the succeeding financial year or the date of filing of annual return for the said financial year, whichever is earlier. To elaborate, the credits pertaining to 2017-18 can be taken either before 20.10.2018 [due date for filing GSTR 3 for the month of September 2018 – i.e. 20th October 2018 as per Section 39 (1)]¹ or the date of filing of annual return (GSTR 9) for the year 2017-18. Hence, any unmatched credit pertaining to the year 2017-18 cannot be taken after 20.10.2018. Section 16 (4) is reproduced below.

16(4) A registered person shall not be entitled to take input tax credit in respect of any invoice or debit note for supply of goods or services or both after the 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.

At the supplier's end also, no corrections are permissible after 20.10.2018, as per the proviso under Section 37 (3) of the Act and the said proviso is reproduced below.

Provided that no rectification of error or omission in respect of the details furnished under sub-section (1) 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.

Now, vide the Removal of Difficulty Order No. 2/2018 C.T. Dt. 31.12.2018, a proviso has been added under Section 16 (4) and another proviso has been added under Section 37 (3), which are reproduced below.

¹ Even though as per Notification 44/2018 CT Dt. 10.09.2019, the time limit for filing GSTR 3 for the period July 2017 to March 2019 would be notified later, the due date as per Section 39 (1) remains as 20th of the succeeding month.

2. In sub-section (4) of section 16 of the said Act, the following proviso shall be inserted, namely: -

"Provided that the registered person shall be entitled to take input tax credit after the due date of furnishing of the return under section 39 for the month of September, 2018 till the due date of furnishing of the return under the said section for the month of March, 2019 in respect of any invoice or invoice relating to such debit note for supply of goods or services or both made during the financial year 2017-18, the details of which have been uploaded by the supplier under sub-section (1) of section 37 till the due date for furnishing the details under sub-section (1) of said section for the month of March, 2019."

3. In sub-section (3) of section 37 of the said Act, after the existing proviso, the following proviso shall be inserted, namely: --

"Provided further that the rectification of error or omission in respect of the details furnished under sub-section (1) shall be allowed after furnishing of the return under section 39 for the month of September, 2018 till the due date for furnishing the details under subsection (1) for the month of March, 2019 or for the quarter January, 2019 to March, 2019."

As per the above proviso inserted under Section 37 (3), the supplier can carry out corrections in respect of the outward supplies made during 2017-18 till 20.04.2019. As per the above proviso inserted under Section 16 (4), the recipient could claim ITC for such unmatched credits also, till 20.04.2019.

The following FAQ on the above would be helpful.

Q 1. I have not taken ITC for certain invoices pertaining to the year 2017-18, till now. Can I take ITC for such missed out invoices on the basis of the Removal of Difficulty Order?

A 1. Section 16 (4) and the proviso added thereunder, by virtue of the removal of difficulty order are reproduced below.

16(4) A registered person shall not be entitled to take input tax credit in respect of any invoice or debit note for supply of goods or services or both

after the 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.

"Provided that the registered person shall be entitled to take input tax credit after the due date of furnishing of the return under section 39 for the month of September, 2018 till the due date of furnishing of the return under the said section for the month of March, 2019 in respect of any invoice or invoice relating to such debit note for supply of goods or services or both made during the financial year 2017-18, the details of which have been uploaded by the supplier under sub-section (1) of section 37 till the due date for furnishing the details under sub-section (1) of said section for the month of March, 2019."

It may be observed from sub section (4) of Section 16 that the bar of availing ITC in respect of any invoices pertaining to 2017-18 is absolute. The concession granted by the proviso relate only to such ITC which has been availed, which remain unmatched as per Section 42. For ready reference the said section is reproduced below.

SECTION 42. Matching, reversal and reclaim of input tax credit. —

(1) The details of every inward supply furnished by a registered person (hereafter in this section referred to as the "recipient") for a tax period shall, in such manner and within such time as may be prescribed, be matched —

(a) with the corresponding details of outward supply furnished by the corresponding registered person (hereafter in this section referred to as the "supplier") in his valid return for the same tax period or any preceding tax period;

(b) with the integrated goods and services tax paid under section 3 of the Customs Tariff Act, 1975 (51 of 1975) in respect of goods imported by him; and

(c) for duplication of claims of input tax credit.

(2) The claim of input tax credit in respect of invoices or debit notes relating to inward supply that match with the details of corresponding outward supply or with the integrated goods and services tax paid under section 3 of the Customs Tariff Act, 1975 (51 of 1975) in respect of goods imported by him shall be finally accepted and such acceptance shall be communicated, in such manner as may be prescribed, to the recipient.

(3) Where the input tax credit claimed by a recipient in respect of an inward supply is in excess of the tax declared by the supplier for the same supply or the outward supply is not declared by the supplier in his valid

returns, the discrepancy shall be communicated to both such persons in such manner as may be prescribed.

(4) The duplication of claims of input tax credit shall be communicated to the recipient in such manner as may be prescribed.

(5) The amount in respect of which any discrepancy is communicated under sub-section (3) and which is not rectified by the supplier in his valid return for the month in which discrepancy is communicated shall be added to the output tax liability of the recipient, in such manner as may be prescribed, in his return for the month succeeding the month in which the discrepancy is communicated.

(6) The amount claimed as input tax credit that is found to be in excess on account of duplication of claims shall be added to the output tax liability of the recipient in his return for the month in which the duplication is communicated.

(7) The recipient shall be eligible to reduce, from his output tax liability, the amount added under sub-section (5), if the supplier declares the details of the invoice or debit note in his valid return within the time specified in sub-section (9) of section 39.

(8) A recipient in whose output tax liability any amount has been added under sub-section (5) or sub-section (6), shall be liable to pay interest at the rate specified under sub-section (1) of section 50 on the amount so added from the date of availing of credit till the corresponding additions are made under the said sub-sections.

(9) Where any reduction in output tax liability is accepted under sub-section (7), the interest paid under sub-section (8) shall be refunded to the recipient by crediting the amount in the corresponding head of his electronic cash ledger in such manner as may be prescribed :

[Provided that the amount of interest to be credited in any case shall not exceed the amount of interest paid by the supplier.]

(10) The amount reduced from the output tax liability in contravention of the provisions of sub-section (7) shall be added to the output tax liability of the recipient in his return for the month in which such contravention takes place and such recipient shall be liable to pay interest on the amount so added at the rate specified in sub-section (3) of section 50.

It may be observed that the said section deals only with those inward supplies which are declared by the recipient of supply, which means the ITC availed. As GSTR 2 is not in vogue, the same would refer to the ITC claimed through GSTR 3B. If such ITC is not matching with the details of outward supplies declared by the suppliers, the same can be rectified at the suppliers' end, until 20.04.2019, as per the Removal of Difficulty order. If any assessee had already reversed his unmatched credits, as per the communication received through GSTR 2 A, they

can avail the credit again upto 20.04.2019, if the supplier rectifies the mistake at his end before this date.

But the above amendments, do not permit availing any fresh credit pertaining to the period July 2017 to March 2018 now, which was permissible only upto 20.10.2018.

Q 2. During the period from July 2017 to March 2018, I have not paid certain GST liability under reverse charge. If I pay it now, can ITC of the same be availed now as per the Removal of Difficulty Order?

A 2. As already explained, the Removal of Difficulty order protects only the ITC already availed, which remains unmatched but does not allow availing any fresh credit, which is governed only by Section 16 (4).

Q 3. During the period from July 2017 to March 2018, I have not paid certain GST liability under reverse charge. If I pay it now, by raising a self invoice now, can ITC of the same be availed now as per the Removal of Difficulty Order?

A 3. As already explained, the Removal of Difficulty order protects only the ITC already availed, which remains unmatched but does not allow availing any fresh credit, which is governed only by Section 16 (4). Even though the self invoice for the same is raised now, i.e. during 2018-19 since it pertains to the supplies during 2017-18, ITC of the same cannot be availed now, as the language of Section 16 (4) is very specific, i.e. *"in respect of any invoice or invoice relating to such debit note for supply of goods or services or both made during the financial year 2017-18"*

Q 4. I have availed certain amount of ITC on the basis of certain invoices during the month August 2017. But these invoices were not matching with the GSTR 2 A communicated to me, in the month of October 2017. Hence, I have reversed such credit in the return for the month of October 2017. Can I avail such credit again now?

A 4. If the supplier rectifies the error and if such credit matches with the outward supply declared by the supplier now, you can avail the ITC again.

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